

VOLUME 2
Titles 9 through 17

2012
REVISED CODE OF WASHINGTON

Published under the authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 2012 2nd special session which adjourned April 11, 2012.

REVISED CODE OF WASHINGTON

2012 Edition

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CERTIFICATE

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MARTY BROWN, Chair
STATUTE LAW COMMITTEE

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PREFACE

Numbering system: The number of each section of this code is made up of three parts, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus RCW 1.04.020 is Title 1, chapter 4, section 20. The section part of the number (.020) is initially made up of three digits, constitutes a true decimal, and allows for new sections to be inserted between old sections already consecutively numbered, merely by adding one or more digits at the end of the number. In most chapters of the code, sections have been numbered by tens (.010, .020, .030, .040, etc.), leaving vacant numbers between existing sections so that new sections may be inserted without extension of the section number beyond three digits.

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

History of the Revised Code of Washington; Source notes: The Revised Code of Washington was adopted by the legislature in 1950; see chapter 1.04 RCW. The original publication (1951) contained material variances from the language and organization of the session laws from which it was derived, including a variety of divisions and combinations of the session law sections. During 1953 through 1959, the Statute Law Committee, in exercise of the powers in chapter 1.08 RCW, completed a comprehensive study of these variances and, by means of a series of administrative orders or reenactment bills, restored each title of the code to reflect its session law source, but retaining the general codification scheme originally adopted. An audit trail of this activity has been preserved in the concluding segments of the source note of each section of the code so affected. The legislative source of each section is enclosed in brackets [] at the end of the section. Reference to session laws is abbreviated; thus "1891 c 23 § 1; 1854 p 99 § 135" refers to section 1, chapter 23, Laws of 1891 and section 135, page 99, Laws of 1854. "Prior" indicates a break in the statutory chain, usually a repeal and reenactment. "RRS or Rem. Supp.—" indicates the parallel citation in Remington's Revised Code, last published in 1949.

Where, before restoration, a section of this code constituted a consolidation of two or more sections of the session laws, or of sections separately numbered in Remington's, the line of derivation is shown for each component section, with each line of derivation being set off from the others by use of small Roman numerals, "(i)," "(ii)," etc.

Where, before restoration, only a part of a session law section was reflected in a particular RCW section the history note reference is followed by the word "part."

"Formerly" and its correlative form "FORMER PART OF SECTION" followed by an RCW citation preserves the record of original codification.

Double amendments: Some double or other multiple amendments to a section made without reference to each other are set out in the code in smaller (8-point) type. See RCW 1.12.025.

Index: Titles 1 through 91 are indexed in the RCW General Index. A separate index is provided for the State Constitution.

Sections repealed or decodified; Disposition table: Information concerning RCW sections repealed or decodified can be found in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1999 or later) consult the codification tables. A complete codification table, including Remington's Revised Statutes, is on the Code Reviser web site at <http://www.leg.wa.gov/codereviser>.

Notes: Notes that are more than ten years old have been removed from the print publication of the RCW except when retention has been deemed necessary to preserve the full intent of the law. All notes are displayed in the electronic copy of the RCW on the Code Reviser web site at <http://www.leg.wa.gov/codereviser>.

Errors or omissions: (1) Where an obvious clerical error has been made in the law during the legislative process, the code reviser adds a corrected word, phrase, or punctuation mark in [brackets] for clarity. These additions do not constitute any part of the law.

(2) Although considerable care has been taken in the production of this code, it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. When those who use this code detect errors in particular sections, a note citing the section involved and the nature of the error may be sent to: Code Reviser, Box 40551, Olympia, WA 98504-0551, so that correction may be made in a subsequent publication.

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Title 9

CRIMES AND PUNISHMENTS

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9.01.055 Citizen immunity if aiding officer, scope—When. Private citizens aiding a police officer, or other officers of the law in the performance of their duties as police officers or officers of the law, shall have the same civil and criminal immunity as such officer, as a result of any act or commission for aiding or attempting to aid a police officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith. [1969 c 37 § 1.]

Immunity from liability for certain types of medical care: RCW 4.24.300.

9.01.110 Omission, when not punishable. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his or her behalf, and competent to perform it. [2011 c 336 § 285; 1909 c 249 § 23; RRS § 2275.]

9.01.120 Civil remedies preserved. The omission to specify or affirm in this act any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, shall not affect any right to recover or enforce the same. [1909 c 249 § 44; RRS § 2296.]

Additional notes found at www.leg.wa.gov

9.01.130 Sending letter, when complete. Whenever any statute makes the sending of a letter criminal, the offense shall be deemed complete from the time it is deposited in any post office or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be proceeded against in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. [1909 c 249 § 22; RRS § 2274.]

9.01.160 Application to existing civil rights. Nothing in this act shall be deemed to affect any civil right or remedy existing at the time when it shall take effect, by virtue of the common law or of the provision of any statute. [1909 c 249 § 43; RRS § 2295.]

Reviser's note: For "this act," see note following RCW 9.01.120.

Chapter 9.02 RCW ABORTION

Sections

9.02.005	Transfer of duties to the department of health.
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Advertising or selling means of abortion: RCW 9.68.030.

Health care facilities, interference with: Chapter 9A.50 RCW.

Right to medical treatment of infant born alive in the course of an abortion procedure: RCW 18.71.240.

9.02.005 Transfer of duties to the department of health. The powers and duties of the state board of health under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 202; 1985 c 213 § 3.]

Additional notes found at www.leg.wa.gov

9.02.050 Concealing birth. Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor. [1909 c 249 § 200; RRS § 2452.]

9.02.100 Reproductive privacy—Public policy. The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

Accordingly, it is the public policy of the state of Washington that:

(1) Every individual has the fundamental right to choose or refuse birth control;

(2) Every woman has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902;

(3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state

shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and

(4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information. [1992 c 1 § 1 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.110 Right to have and provide. The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.

A physician may terminate and a health care provider may assist a physician in terminating a pregnancy as permitted by this section. [1992 c 1 § 2 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.120 Unauthorized abortions—Penalty. Unless authorized by RCW 9.02.110, any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. [1992 c 1 § 3 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.130 Defenses to prosecution. The good faith judgment of a physician as to viability of the fetus or as to the risk to life or health of a woman and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue. [1992 c 1 § 4 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.140 State regulation. Any regulation promulgated by the state relating to abortion shall be valid only if:

(1) The regulation is medically necessary to protect the life or health of the woman terminating her pregnancy,

(2) The regulation is consistent with established medical practice, and

(3) Of the available alternatives, the regulation imposes the least restrictions on the woman's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902. [1992 c 1 § 5 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.150 Refusing to perform. No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the termination of a pregnancy. [1992 c 1 § 6 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.160 State-provided benefits. If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any such program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies. [1992 c 1 § 7 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.170 Definitions. For purposes of this chapter:

(1) "Viability" means the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(3) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

(4) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

(5) "Health care provider" means a physician or a person acting under the general direction of a physician.

(6) "State" means the state of Washington and counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington.

(7) "Private medical facility" means any medical facility that is not owned or operated by the state. [1992 c 1 § 8 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.900 Construction—1992 c 1 (Initiative Measure No. 120). RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 shall not be construed to define the state's interest in the fetus for any purpose other than the specific provisions of RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902. [1992 c 1 § 10 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.901 Severability—1992 c 1 (Initiative Measure No. 120). If any provision of RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 or its application to any person or circumstance is held invalid, the remainder of RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 or the application of the provision to other persons or circumstances is not affected. [1992 c 1 § 11 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.902 Short title—1992 c 1 (Initiative Measure No. 120). RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 shall be known and may be cited as the Reproductive Privacy Act. [1992 c 1 § 12 (Initiative Measure No. 120, approved November 5, 1991).]

Chapter 9.03 RCW

ABANDONED REFRIGERATION EQUIPMENT

Sections

9.03.010	Abandoning, discarding refrigeration equipment.
9.03.020	Permitting unused equipment to remain on premises.
9.03.030	Violation of RCW 9.03.010 or 9.03.020.
9.03.040	Keeping or storing equipment for sale.

9.03.010 Abandoning, discarding refrigeration equipment. Any person who discards or abandons or leaves in any place accessible to children any refrigerator, icebox, or deep freeze locker having a capacity of one and one-half cubic feet or more, which is no longer in use, and which has not had the door removed or a portion of the latch mechanism

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removed to prevent latching or locking of the door, is guilty of a misdemeanor. [1955 c 298 § 1.]

9.03.020 Permitting unused equipment to remain on premises. Any owner, lessee, or manager who knowingly permits such an unused refrigerator, icebox, or deep freeze locker to remain on the premises under his or her control without having the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door is guilty of a misdemeanor. [2011 c 336 § 286; 1955 c 298 § 2.]

9.03.030 Violation of RCW 9.03.010 or 9.03.020. Guilt of a violation of RCW 9.03.010 or 9.03.020 shall not, in itself, render one guilty of manslaughter, battery, or other crime against a person who may suffer death or injury from entrapment in such refrigerator, icebox, or deep freeze locker. [1955 c 298 § 3.]

9.03.040 Keeping or storing equipment for sale. Any person who keeps or stores refrigerators, iceboxes, or deep freeze lockers for the purpose of selling or offering them for sale shall not be guilty of a violation of this chapter if he or she takes reasonable precautions to effectively secure the door of any refrigerator, icebox, or deep freeze locker held for purpose of sale so as to prevent entrance of children small enough to fit into such articles. [2011 c 336 § 287; 1955 c 298 § 4.]

Chapter 9.04 RCW

ADVERTISING, CRIMES RELATING TO

Sections

9.04.010	False advertising.
9.04.040	Advertising cures of lost sexual potency—Evidence.
9.04.050	False, misleading, deceptive advertising.
9.04.060	False, misleading, deceptive advertising—Action to restrain and prevent.
9.04.070	False, misleading, deceptive advertising—Penalty.
9.04.080	False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice.
9.04.090	Advertising fuel prices by service stations.

Apple advertising: Chapter 15.24 RCW.

Attaching advertisements to utility poles—Penalty: RCW 70.54.090.

Attorneys-at-law, advertising: Rules of court: RPC 7.2.

Banks and trust companies:

advertising legal services: RCW 30.04.260.

using words indicating: RCW 30.04.020.

Buildings, placing advertising matter on: Chapter 9A.48 RCW.

Charitable solicitations, regulation, application of chapter 9.04 RCW: RCW 19.09.340.

Contraceptives or means of abortion, advertising: RCW 9.68.030.

Dentistry, advertising restrictions: RCW 18.32.665, 18.32.755.

Egg law, advertising violations: Chapter 69.25 RCW.

Elections, advertising violations:

initiative or referendum petition signers: RCW 29A.84.250.

recall petition signers: RCW 29A.84.220.

Employment agencies, false advertising: Chapter 19.31 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.180.

Indecent articles: RCW 9.68.030.

Insurance, unlawful advertising practices: Chapter 48.30 RCW.

Optometry advertising: RCW 18.53.140, 18.53.150.
State parks, advertising prohibited: RCW 79A.05.165.

9.04.010 False advertising. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: PROVIDED, That the provisions of this section shall not apply to any owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof. [1913 c 34 § 1; RRS § 2622-1.]

9.04.040 Advertising cures of lost sexual potency—Evidence. Any advertisement in any newspaper, periodical, pamphlet, circular or other written or printed paper, containing the words, "lost manhood", "lost vitality", "lost vigor", "monthly regulators for women", or words synonymous therewith, shall be prima facie evidence of intent to violate *RCW 9.04.030 and 9.04.040 by the person or persons so advertising, or causing to be advertised, or publishing or permitting to be published, or distributing, circulating and displaying or causing to be distributed, circulated or displayed, any such advertisement. [1921 c 168 § 2; RRS § 2462-1.]

*Reviser's note: RCW 9.04.030 was repealed by 1987 c 456 § 32.

9.04.050 False, misleading, deceptive advertising. It shall be unlawful for any person to publish, disseminate or display, or cause directly or indirectly, to be published, disseminated or displayed in any manner or by any means, including solicitation or dissemination by mail, telephone, electronic communication, or door-to-door contacts, any false, deceptive or misleading advertising, with knowledge of the facts which render the advertising false, deceptive or misleading, for any business, trade or commercial purpose or for the purpose of inducing, or which is likely to induce, directly or indirectly, the public to purchase, consume, lease, dispose of, utilize or sell any property or service, or to enter into any obligation or transaction relating thereto: PROVIDED, That nothing in this section shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, such advertising in good faith without knowledge of its false, deceptive or misleading character. [2000 c 33 § 1; 1961 c 189 § 1.]

Blind made products, false advertising: RCW 19.06.030, 19.06.040.

Highway advertising control act of 1961, Scenic Vistas Act of 1971: Chapter 47.42 RCW.

Additional notes found at www.leg.wa.gov

9.04.060 False, misleading, deceptive advertising—Action to restrain and prevent. The attorney general or the prosecuting attorneys of the several counties may bring an action in the superior court to restrain and prevent any person from violating any provision of RCW 9.04.050 through 9.04.080. [1961 c 189 § 2.]

9.04.070 False, misleading, deceptive advertising—Penalty. Any person who violates any order or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both. [1999 c 143 § 1; 1961 c 189 § 3.]

9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice. In the enforcement of RCW 9.04.050 through 9.04.080 the official enforcing RCW 9.04.050 through 9.04.080 may accept an assurance of discontinuance of any act or practice deemed in violation of RCW 9.04.050 through 9.04.080, from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. A violation of such assurance shall constitute prima facie proof of a violation of RCW 9.04.050 through 9.04.080: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [2011 c 336 § 288; 1961 c 189 § 4.]

9.04.090 Advertising fuel prices by service stations. It is unlawful for any dealer or service station, as both are defined in *RCW 82.36.010, to advertise by publication, dissemination, display, or whatever means:

(1) A price per unit of fuel that is expressed in a unit of measurement different from that employed by the pump or other device used to dispense the fuel, unless the price is advertised for both units of measurement in the same fashion; or

(2) A price per unit of fuel that is conditioned upon the purchase of another product, unless the conditional language, name, and price of the other product are clearly expressed in the advertisement in characters at least one-half the height of the characters used to advertise the fuel price.

Violation of this section is a misdemeanor and is subject to the provisions of RCW 9.04.060 through 9.04.080. [1983 c 114 § 1.]

*Reviser's note: RCW 82.36.010 was amended by 1998 c 176 § 6, deleting the definition of "service station." RCW 82.36.010 was subsequently amended by 2007 c 515 § 1, deleting the definition of "dealer."

Chapter 9.05 RCW

SABOTAGE

(Formerly: Anarchy and sabotage)

Sections

9.05.030	Assemblages of saboteurs.
9.05.060	Criminal sabotage defined—Penalty.
9.05.090	Provisions cumulative.

Freedom of speech: State Constitution Art. 1 § 5.

Subversive activities: Chapter 9.81 RCW.

Treason: State Constitution Art. 1 § 27; chapter 9.82 RCW.

9.05.030 Assemblages of saboteurs. Whenever two or more persons assemble for the purpose of committing criminal sabotage, as defined in RCW 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid, or instigation, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 6; 1999 c 191 § 1; 1992 c 7 § 2; 1909 c 249 § 314; 1903 c 45 § 4; RRS § 2566.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

(2) Criminal sabotage is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 7; 1999 c 191 § 2; 1919 c 173 § 1; RRS § 2563-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Endangering life by breach of labor contract: RCW 49.44.080.

Excessive steam in boilers: RCW 70.54.080.

Malicious injury to railroad property: RCW 81.60.070.

Malicious mischief—Injury to property: Chapter 9A.48 RCW.

Sabotaging rolling stock: RCW 81.60.080.

9.05.090 Provisions cumulative. RCW 9.05.030 and 9.05.060 shall not be construed to repeal or amend any existing penal statute. [1999 c 191 § 3; 1919 c 173 § 4; RRS § 2563-6.]

Chapter 9.08 RCW

ANIMALS, CRIMES RELATING TO

Sections

9.08.030	False certificate of registration of animals—False representation as to breed.
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9.08.065	Definitions.
9.08.070	Pet animals—Taking, concealing, injuring, killing, etc.—Penalty.
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9.08.078	Illegal sale, receipt, or transfer of pet animals—Separate offenses.
9.08.080	Acts against animal facilities—Intent.
9.08.090	Acts against animal facilities.

Accelerant detection dogs

harming: RCW 9A.76.200.

immunity of handler: RCW 4.24.410.

Animals and livestock: Title 16 RCW.

Bees: Chapter 15.60 RCW.

Brands and marks, generally: Chapter 9.16 RCW.

Bulls running at large: RCW 16.24.180 through 16.24.210.

Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.

"Coyote getters," use permitted: RCW 9.41.185.

Cruelty to

animals, generally: Chapter 16.52 RCW.

stock in transit: RCW 81.48.070.

Destroying animals in state parks: RCW 79A.05.165.

Disposal of dead animals: Chapter 16.68 RCW.

Dog law: Chapters 16.08, 16.10 RCW.

Dog licensing

control zones: Chapter 16.10 RCW.

counties: Chapter 36.49 RCW.

unclassified cities: RCW 35.30.010.

Game code: Title 77 RCW.

Guard animals, registration: RCW 43.44.120.

Guide dogs: Chapter 70.84 RCW.

Horses, mules, and asses running at large: Chapter 16.24 RCW.

Indictment or information in crimes involving animals: RCW 10.37.070.

Ladybugs, beneficial insects: Chapter 15.61 RCW.

Police dogs

harming: RCW 9A.76.200.

immunity of handler: RCW 4.24.410.

Police horses, harming: RCW 9A.76.200.

Quarantine of diseased domestic animals: Chapter 16.36 RCW.

Race horses: Chapter 67.16 RCW.

Service dogs: Chapter 70.84 RCW.

Stealing horses or cattle: Chapter 9A.56 RCW.

Transporting in unsafe manner: RCW 16.52.080.

9.08.030 False certificate of registration of animals—False representation as to breed. Every person who, by color or aid of any false pretense, representation, token or writing shall obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a certificate of registration of any animal or bird in a herdbook, or other register of any such association, society or company, or a transfer of any such registration, and every person who shall knowingly represent an animal or bird for breeding purposes to be of a greater degree of any particular strain of blood than such animal actually possesses, shall be guilty of a gross misdemeanor. [1909 c 249 § 341; RRS § 2593.]

9.08.065 Definitions. As used in RCW 9.08.070 through 9.08.078:

(1) "Pet animal" means a tamed or domesticated animal legally retained by a person and kept as a companion. "Pet animal" does not include livestock raised for commercial purposes.

(2) "Research institution" means a facility licensed by the United States department of agriculture to use animals in biomedical or product research.

(3) "U.S.D.A. licensed dealer" means a person who is licensed or required to be licensed by the United States department of agriculture to commercially buy, receive, sell, negotiate for sale, or transport animals. [2003 c 53 § 8; 1989 c 359 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty. (1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal, except as provided by subsection (2) of this section:

(a) Takes, leads away, confines, secretes or converts any pet animal, except in cases in which the value of the pet animal exceeds two hundred fifty dollars;

(b) Conceals the identity of any pet animal or its owner by obscuring, altering, or removing from the pet animal any collar, tag, license, tattoo, or other identifying device or mark;

(c) Willfully or recklessly kills or injures any pet animal, unless excused by law.

(2) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property. [2003 c 53 § 9; 1989 c 359 § 2; 1982 c 114 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application of Consumer Protection Act: RCW 19.86.145.

9.08.072 Transferring stolen pet animal to a research institution—Penalty. (1) It is unlawful for any person to receive with intent to sell to a research institution in the state of Washington, or sell or otherwise directly transfer to a research institution in the state of Washington, a pet animal that the person knows or has reason to know has been stolen or fraudulently obtained. This section does not apply to U.S.D.A. licensed dealers.

(2) The first conviction under this section is a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal.

(3) A second or subsequent conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal.

(4) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property. [2003 c 53 § 10.]

[Title 9 RCW—page 6]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.074 Transferring stolen pet animal to a person who has previously sold a stolen pet animal to a research institution—Penalty. (1) It is unlawful for any person, who knows or has reason to know that a pet animal has been stolen or fraudulently obtained, to sell or otherwise transfer the pet animal to another who the person knows or has reason to know has previously sold a stolen or fraudulently obtained pet animal to a research institution in the state of Washington.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal. [2003 c 53 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.076 Transferring stolen pet animal to a research institution by a U.S.D.A. licensed dealer—Penalty. (1) It is unlawful for a U.S.D.A. licensed dealer to receive with intent to sell, or sell or transfer directly or through a third party, to a research institution in the state of Washington, a pet animal that the dealer knows or has reason to know has been stolen or fraudulently obtained.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal. [2003 c 53 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.078 Illegal sale, receipt, or transfer of pet animals—Separate offenses. (1) The sale, receipt, or transfer of each individual pet animal in violation of RCW 9.08.070 through 9.08.078 constitutes a separate offense.

(2) The provisions of RCW 9.08.070 through 9.08.078 shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any government agency, operating under law. [2003 c 53 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.080 Acts against animal facilities—Intent. There has been an increasing number of illegal acts committed against animal production and research facilities involving injury or loss of life to animals or humans, criminal trespass, and damage to property. These actions not only abridge the property rights of the owners, operators, and employees of the facility, they may also damage the public interest by jeopardizing crucial animal production or agricultural, scientific, or biomedical research. These actions may also threaten the public safety by exposing communities to public health concerns and creating traffic hazards. These actions substantially disrupt or damage research and result in the potential loss of physical and intellectual property. While the criminal code, particularly the malicious mischief crimes, adequately covers those who intentionally and without authority damage or destroy farm animals, the code does not adequately cover similar misconduct directed against research and educational facilities. Therefore, it is in the interest of the people of the

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state of Washington to protect the welfare of humans and animals, as well as the productive use of private or public funds, to promote and protect scientific and medical research, foster education, and preserve and enhance agricultural production.

It is the intent of the legislature that the courts in deciding applications for injunctive relief under RCW 4.24.580 give full consideration to the constitutional rights of persons to speak freely, to picket, and to conduct other lawful activities. [1991 c 325 § 1.]

Civil liability for acts against animal facilities: RCW 4.24.570 through 4.24.580.

Additional notes found at www.leg.wa.gov

9.08.090 Acts against animal facilities. A person is guilty of a class C felony: If he or she, without authorization, knowingly takes, releases, destroys, contaminates, or damages any animal or animals kept in a research or educational facility where the animal or animals are used or to be used for medical research purposes or other research purposes or for educational purposes; or if he or she, without authorization, knowingly destroys or damages any records, equipment, research product, or other thing pertaining to such animal or animals. [1991 c 325 § 2.]

Civil liability for acts against animal facilities: RCW 4.24.570 through 4.24.580.

Additional notes found at www.leg.wa.gov

Chapter 9.12 RCW BARRATRY

Sections

- 9.12.010 Barratry.
9.12.020 Buying, demanding, or promising reward by district judge or deputy.

9.12.010 Barratry. Every person who brings on his or her own behalf, or instigates, incites, or encourages another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant in the suit, or who serves or sends any paper or document purporting to be or resembling a judicial process, that is not in fact a judicial process, is guilty of a misdemeanor; and in case the person offending is an attorney, he or she may, in addition thereto be disbarred from practicing law within this state. [2001 c 310 § 3. Prior: 1995 c 285 § 27; 1915 c 165 § 1; 1909 c 249 § 118; Code 1881 § 901; 1873 p 204 § 100; 1854 p 92 § 91; RRS § 2370.]

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Attorneys-at-law: Chapter 2.44 RCW.

State bar act: Chapter 2.48 RCW.

Additional notes found at www.leg.wa.gov

9.12.020 Buying, demanding, or promising reward by district judge or deputy. Every district judge or deputy who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of commencing a suit thereon before a district judge, or who shall give or promise any valuable consideration to any person as an inducement to bring, or as a consideration for having brought, a suit before

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a district judge, shall be guilty of a misdemeanor. [1987 c 202 § 138; 1909 c 249 § 119; RRS § 2371.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 9.16 RCW BRANDS AND MARKS, CRIMES RELATING TO

Sections

- 9.16.005 Definitions.
9.16.010 Removing lawful brands.
9.16.020 Imitating lawful brand.
9.16.030 Counterfeit mark—Intellectual property.
9.16.035 Counterfeiting—Penalties.
9.16.041 Counterfeit items—Seizure and forfeiture.
9.16.050 When deemed affixed.
9.16.060 Fraudulent registration of trademark.
9.16.070 Form and similitude defined.
9.16.080 Petroleum products improperly labeled or graded—Penalty.
9.16.100 Use of the words "sterling silver," etc.
9.16.110 Use of words "coin silver," etc.
9.16.120 Use of the word "sterling" on mounting.
9.16.130 Use of the words "coin silver" on mounting.
9.16.140 Unlawfully marking article made of gold.
9.16.150 "Marked, stamped or branded" defined.

Animals and livestock: Title 16 RCW.

Defacement of motor serial numbers: RCW 9A.56.180.

Egg law: Chapter 69.25 RCW.

Fertilizers, minerals, and limes, brand alteration, etc.: Chapter 15.54 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Forest products, marks and brands: Chapter 76.36 RCW.

Honey act, misbranding, etc.: Chapter 69.28 RCW.

Poisons, misbranding: Chapters 69.36, 69.40 RCW.

Trademark registration: Chapters 19.76, 19.77 RCW.

Watches, removal of serial number: Chapter 19.60 RCW.

9.16.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Counterfeit mark" means:

- (a) Any unauthorized reproduction or copy of intellectual property; or
(b) Intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, device, design, or work adopted or used by a person to identify such person's goods or services. Intellectual property does not have exclusive use rights to trade names registered under chapter 19.80 RCW.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized. [1999 c 322 § 1.]

9.16.010 Removing lawful brands. Every person who shall willfully deface, obliterate, remove, or alter any mark or brand placed by or with the authority of the owner thereof on any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in a state correctional facility for

not more than five years, or by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [2011 c 96 § 4; 1992 c 7 § 3; 1909 c 249 § 342; Code 1881 § 839; 1873 p 191 § 54; RRS § 2594.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Forest product brands and marks, falsifying, etc.: RCW 76.36.110, 76.36.120.

9.16.020 Imitating lawful brand. Every person who, in any county, places upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, is:

(1) If done with intent to confuse or commingle such property with, or to appropriate to his or her own use, the property of such other owner, guilty of a felony, punishable by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

(2) If done without such intent, guilty of a misdemeanor. [2011 c 96 § 5; 1992 c 7 § 4; 1909 c 249 § 343; RRS § 2595.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

9.16.030 Counterfeit mark—Intellectual property. Any person who willfully and knowingly, and for financial gain, manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any item, or offers any services, bearing or identified by a counterfeit mark, is guilty of the crime of counterfeiting.

Any state or federal certificate of registration of any intellectual property is prima facie evidence of the facts stated in the certificate. [1999 c 322 § 2; 1909 c 249 § 344; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 87; RRS § 2596.]

9.16.035 Counterfeiting—Penalties. (1) Counterfeiting is a misdemeanor, except as provided in subsections (2), (3) and (4) of this section.

(2) Counterfeiting is a gross misdemeanor if:

(a) The defendant has previously been convicted under RCW 9.16.030; or

(b) The violation involves more than one hundred but fewer than one thousand items bearing a counterfeit mark or the total retail value of all items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars but less than ten thousand dollars.

(3) Counterfeiting is a class C felony if:

(a) The defendant has been previously convicted of two or more offenses under RCW 9.16.030;

(b) The violation involves the manufacture or production of items bearing counterfeit marks; or

(c) The violation involves one thousand or more items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is ten thousand dollars or more.

(4) Counterfeiting is a class C felony if:

(a) The violation involves the manufacture, production, or distribution of items bearing counterfeit marks; and

(b) The defendant knew or should have known that the counterfeit items, by their intended use, endangered the health or safety of others.

(5) For purposes of this section, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, possesses, or possesses with intent to sell.

(6) A person guilty of counterfeiting shall be fined an amount up to three times the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

(7) The penalties provided for in this section are cumulative and do not affect any other civil and criminal penalties provided by law. [1999 c 322 § 3.]

9.16.041 Counterfeit items—Seizure and forfeiture.

(1) Any items bearing a counterfeit mark, and all personal property employed or used in connection with counterfeiting, including but not limited to, any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, shall be seized by any law enforcement officer.

All seized personal property referenced in this subsection shall be forfeited in accordance with RCW 10.105.010.

(2) Upon request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition.

(3) If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition. [1999 c 322 § 4.]

9.16.050 When deemed affixed. A label, trademark, term, design, device or form of advertisement shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation or compound whenever it is in any manner placed in or upon either the article itself, or the box, bale, barrel, bottle, case, cask or other vessel or package, or the cover, wrapper, stopper, brand, label or other thing in, by or with which the goods are packed, enclosed or otherwise prepared for sale or distribution. [1909 c 249 § 346; RRS § 2598.]

9.16.060 Fraudulent registration of trademark.

Every person who shall for himself or herself, or on behalf of any other person, corporation, association, or union, procure the filing of any label, trademark, term, design, device, or form of advertisement, with the secretary of state by any fraudulent means, shall be guilty of a misdemeanor. [2011 c 336 § 289; 1909 c 249 § 347; RRS § 2599.]

Trademark registration: Chapter 19.77 RCW.

9.16.070 Form and similitude defined. A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. [1909 c 249 § 348; RRS § 2600.]

9.16.080 Petroleum products improperly labeled or graded—Penalty. (1) It shall be unlawful for any person, firm, or corporation:

(a) To use, adopt, place upon, or permit to be used, adopted or placed upon, any barrel, tank, drum or other container of gasoline or lubricating oil for internal combustion engines, sold or offered for sale, or upon any pump or other device used in delivering the same, any trade name, trademark, designation or other descriptive matter, which is not the true and correct trade name, trademark, designation or other descriptive matter of the gasoline or lubricating oil so sold or offered for sale;

(b) To sell, or offer for sale, or have in his or her or its possession with intent to sell, any gasoline or lubricating oil, contained in, or taken from, or through any barrel, tank, drum, or other container or pump or other device, so unlawfully labeled or marked, as hereinabove provided;

(c) To sell, or offer for sale, or have in his or her or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered for sale or sold.

(2)(a) Except as provided in (b) of this subsection, any person, firm, or corporation violating this section is guilty of a misdemeanor.

(b) A second and each subsequent violation of this section is a gross misdemeanor. [2003 c 53 § 14; 1927 c 222 § 1; RRS § 2637-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.16.100 Use of the words "sterling silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling," "sterling silver," or "solid silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 290; 1909 c 249 § 428; RRS § 2680.]

9.16.110 Use of words "coin silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his or her possession with intent to dispose of any metal article marked, stamped or branded with the words "coin," or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured, is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 291; 1909 c 249 § 429; RRS § 2681.]

9.16.120 Use of the word "sterling" on mounting. Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, (2012 Ed.)

pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 292; 1909 c 249 § 430; RRS § 2682.]

9.16.130 Use of the words "coin silver" on mounting. Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 293; 1909 c 249 § 431; RRS § 2683.]

9.16.140 Unlawfully marking article made of gold. Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor. [2011 c 336 § 294; 1909 c 249 § 432; RRS § 2684.]

9.16.150 "Marked, stamped or branded" defined. An article shall be deemed to be "marked, stamped or branded" whenever such article, or any box, package, cover or wrapper in which the same is enclosed, encased or prepared for sale or delivery, or any card, label or placard with which the same may be exhibited or displayed, is so marked, stamped or branded. [1909 c 249 § 433; RRS § 2685.]

Chapter 9.18 RCW BIDDING OFFENSES (Formerly: Bribery and grafting)

Sections

9.18.080	Offender a competent witness.
9.18.120	Suppression of competitive bidding.
9.18.130	Collusion to prevent competitive bidding—Penalty.
9.18.150	Agreements outside state.

9.18.080 Offender a competent witness. Every person offending against any of the provisions of law relating to bribery or corruption shall be a competent witness against another so offending and shall not be excused from giving testimony tending to criminate himself or herself. [2011 c 336 § 295; 1909 c 249 § 78; RRS § 2330. Cf. 1907 c 60 §§ 1, 2; RRS §§ 2149, 2150.]

Bribery and corruption: Chapter 9A.68 RCW.

Incriminating testimony not to be used: RCW 10.52.090.

Rights of accused persons: State Constitution Art. 1 § 9.

9.18.120 Suppression of competitive bidding. (1) When any competitive bid or bids are to be or have been

solicited, requested, or advertised for by the state of Washington, or any county, city, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, city, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or herself or as agent of another, or as agent for or as a member of any partnership, unincorporated firm or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he or she will on behalf of himself or herself or such others submit or permit another to submit for him or her any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 15; 1921 c 12 § 1; RRS § 2333-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.18.130 Collusion to prevent competitive bidding—Penalty. (1) It shall be unlawful for any person for himself or herself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in RCW 9.18.120.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 16; 1921 c 12 § 2; RRS § 2333-2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.18.150 Agreements outside state. It shall be no defense to a prosecution under RCW 9.18.120 through 9.18.150 that a payment or promise of payment of any money, check, draft, or anything of value, or any other understanding or arrangement to eliminate unrestricted competitive bids was had or made outside of the state of Washington, if such work or improvement for which bids are called is to be done or performed within the state. [1921 c 12 § 4; RRS § 2333-4.]

Chapter 9.24 RCW CORPORATIONS, CRIMES RELATING TO

Sections

9.24.010	Fraud in stock subscription.
9.24.020	Fraudulent issue of stock, scrip, etc.
9.24.030	Insolvent bank receiving deposit.
9.24.040	Corporation doing business without license.
9.24.050	False report of corporation.

Banks and trust companies, penalties: RCW 30.04.020, 30.04.050, 30.04.060, 30.04.230, 30.04.240, 30.04.260, 30.12.090 through 30.12.120, 30.12.190, 30.16.010, 30.44.110, 30.44.120.

Business corporations: Title 23B RCW.

Child labor: RCW 26.28.060, 26.28.070, chapter 49.12 RCW.

Common carriers: Chapter 22.32 RCW.

Conspiracy, forfeiture of right to do business: RCW 9A.08.030, 9A.28.040.

Corporations, criminal process against: Chapter 10.01 RCW.

Credit unions, penalties: Chapter 31.12 RCW.

Discrimination in employment: Chapter 49.60 RCW.

False statements in filings with secretary of state: RCW 43.07.210.

Fraud: Chapter 9A.60 RCW.

Hours of labor: Chapter 49.28 RCW.

Industrial welfare: Chapter 49.12 RCW.

Insurance companies, penalties: RCW 48.01.080, 48.06.190, 48.07.060, 48.08.040, 48.08.050, 48.09.340, 48.17.480, 48.18.180, 48.30.110, 48.30.190, 48.30.210 through 48.30.230, 48.44.060.

Labor

conditions of: Chapter 49.12 RCW.

prohibited practices: Chapter 49.44 RCW.

Legal services, advertising of—Penalty: RCW 30.04.260.

Minors, wages, working conditions, permits: RCW 49.12.121, 49.12.123.

Mutual savings banks, penalties: RCW 32.04.100 through 32.04.130, 32.24.080.

Public service companies: Title 80 RCW.

Railroad rolling stock, penalties: RCW 81.60.080.

Savings and loan associations, prohibited acts: Chapter 33.36 RCW.

Trading stamps, penalties: RCW 19.84.040.

Transportation companies: Title 81 RCW.

Unemployment compensation, penalties: Chapter 50.36 RCW.

Uniform Fraudulent Conveyance Act: Chapter 19.40 RCW.

Wages—Payment—Collection: Chapter 49.48 RCW.

Warehouse operators: Chapter 22.32 RCW.

Workers' compensation, penalties: RCW 51.16.140, chapter 51.48 RCW.

9.24.010 Fraud in stock subscription. Every person who shall sign the name of a fictitious person to any subscription for or any agreement to take stock in any corporation existing or proposed, and every person who shall sign to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or upon any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor. [1909 c 249 § 386; RRS § 2638. Formerly RCW 9.44.090.]

9.24.020 Fraudulent issue of stock, scrip, etc. Every officer, agent or other person in the service of a joint stock company or corporation, domestic or foreign, who, willfully and knowingly with intent to defraud:

(1) Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be

signed or executed, with intent to sell, pledge, or issue, or cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

(2) Reissues, sells, pledges, disposes of, or causes to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 17; 1992 c 7 § 5; 1909 c 249 § 387; RRS § 2639. Formerly RCW 9.37.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.24.030 Insolvent bank receiving deposit. Every owner, officer, stockholder, agent or employee of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he or she knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than ten thousand dollars. [2003 c 53 § 18; 1992 c 7 § 6; 1909 c 249 § 388; 1893 c 111 § 1; RRS § 2640. Formerly RCW 9.45.140.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to mutual savings banks: RCW 32.04.120.

Receiving deposits by bank after insolvency: State Constitution Art. 12 § 12, RCW 30.44.120.

9.24.040 Corporation doing business without license. Every corporation, whether domestic or foreign, and every person representing or pretending to represent such corporation as an officer, agent or employee thereof, who shall transact, solicit or advertise for any business in this state, before such corporation shall have obtained from the officer lawfully authorized to issue the same, a certificate that such corporation is authorized to transact business in this state, shall be guilty of a gross misdemeanor. [1909 c 249 § 389; RRS § 2641. Formerly RCW 9.45.130.]

Application to mutual savings banks: RCW 32.04.120.

9.24.050 False report of corporation. Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any

enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars. [2003 c 53 § 19; 1992 c 7 § 7; 1909 c 249 § 390; RRS § 2642. Formerly RCW 9.38.040.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to mutual savings banks: RCW 32.04.120.

Chapter 9.26A RCW

TELECOMMUNICATIONS CRIME

(Formerly: Credit cards, crimes relating to)

Sections

9.26A.090	Telephone company credit cards—Prohibited acts.
9.26A.100	Definitions.
9.26A.110	Fraud in obtaining telecommunications service—Penalty.
9.26A.115	Fraud in obtaining telecommunications service—Use of telecommunications device—Penalty.
9.26A.120	Fraud in operating coin-box telephone or other receptacle.
9.26A.130	Penalty for manufacture or sale of slugs to be used for coin.
9.26A.140	Unauthorized sale or procurement of telephone records—Penalties—Definitions.
9.26A.900	Severability—1990 c 11.

Civil cause of action: RCW 9A.56.268.

Telecommunications crimes: RCW 9A.56.262 through 9A.56.266.

9.26A.090 Telephone company credit cards—Prohibited acts. Every person who sells, rents, lends, gives, advertises for sale or rental, or publishes the credit card number of an existing, canceled, revoked, expired, or nonexistent telephone company credit card, or the numbering or coding that is employed in the issuance of telephone company credit cards or access devices, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful charge, shall be guilty of a gross misdemeanor. [1990 c 11 § 3; 1974 ex.s. c 160 § 1.]

9.26A.100 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Access device" shall have the same meaning as that contained in RCW 9A.56.010.

(2) "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but does not mean an automated typewriter or typesetter, portable hand held calculator, or other similar device.

(3) "Computer trespass" shall have the same meaning as that contained in chapter 9A.52 RCW.

(4) "Credit card number" means the card number or coding appearing on a credit card or other form of authorization, including an identification card or plate issued to a person by any telecommunications provider that permits the person to whom it has been issued to obtain telecommunications service on credit. The term includes the number or description of

the card or plate, even if the card or plate itself is not produced at the time the telecommunications service is obtained.

(5) "Publish" means the communication or dissemination of information to any one or more persons: (a) Orally, in person, or by telephone, radio, or television; (b) in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book; or (c) electronically, including by the use of recordings, computer networks, bulletin boards, or other means of electronic storage and retrieval.

(6) "Telecommunications" shall have the same meaning as that contained in RCW 80.04.010 and includes telecommunications service that originates, terminates, or both originates and terminates in this state.

(7) "Telecommunications company" shall have the same meaning as that contained in RCW 80.04.010.

(8) "Telecommunications device" means any operating procedure or code, instrument, apparatus, or equipment designed or adapted for a particular use, and which is intended or can be used in violation of this chapter, and includes, but is not limited to, computer hardware, software, and programs; electronic mail system; voice mail system; private branch exchange; or any other means of facilitating telecommunications service.

(9) "Telephone company" means any local exchange company, as defined in RCW 80.04.010. [1990 c 11 § 1.]

9.26A.110 Fraud in obtaining telecommunications service—Penalty. (1) Every person who, with intent to evade the provisions of any order or rule of the Washington utilities and transportation commission or of any tariff, price list, contract, or any other filing lawfully submitted to the commission by any telephone, telegraph, or telecommunications company, or with intent to defraud, obtains telephone, telegraph, or telecommunications service from any telephone, telegraph, or telecommunications company through: (a) The use of a false or fictitious name or telephone number; (b) the unauthorized use of the name or telephone number of another; (c) the physical or electronic installation of, rearrangement of, or tampering with any equipment, or use of a telecommunications device; (d) the commission of computer trespass; or (e) any other trick, deceit, or fraudulent device, is guilty of a misdemeanor.

(2) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds fifty dollars in the aggregate, then such person is guilty of a gross misdemeanor.

(3) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds two hundred fifty dollars in the aggregate, then such person is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(4) For any act that constitutes a violation of both this section and RCW 9.26A.115 the provisions of RCW 9.26A.115 shall be exclusive. [2003 c 53 § 20; 1990 c 11 § 2; 1981 c 252 § 1; 1977 ex.s. c 42 § 1; 1974 ex.s. c 160 § 2; 1972 ex.s. c 75 § 1; 1955 c 114 § 1. Formerly RCW 9.45.240.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Injunctive relief for violations: RCW 7.40.230.

9.26A.115 Fraud in obtaining telecommunications service—Use of telecommunications device—Penalty. Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who:

(1) Makes, possesses, sells, gives, or otherwise transfers to another a telecommunications device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or

(2) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling a telecommunications device described in subsection (1) of this section with knowledge or reason to believe that the plans may be used to make or assemble such device. [2003 c 53 § 21.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.26A.120 Fraud in operating coin-box telephone or other receptacle. Any person who shall knowingly and wilfully operate, or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, [any] coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of such machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, shall be guilty of a misdemeanor. [1929 c 184 § 1; RRS § 5842-1. Formerly RCW 9.45.180.]

9.26A.130 Penalty for manufacture or sale of slugs to be used for coin. Any person who, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any coin-box telephone or other receptacle, depository or contrivance, designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, or who, knowing or having cause to believe, that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device, or substance whatsoever intended or calculated to be placed or deposited in any coin-box telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor. [1929 c 184 § 2; RRS § 5842-2. Formerly RCW 9.45.190.]

9.26A.140 Unauthorized sale or procurement of telephone records—Penalties—Definitions. (1) A person is

guilty of the unauthorized sale or procurement of telephone records if the person:

(a) Intentionally sells the telephone record of any resident of this state without the authorization of the customer to whom the record pertains;

(b) By fraudulent, deceptive, or false means obtains the telephone record of any resident of this state to whom the record pertains;

(c) Knowingly purchases the telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

(d) Knowingly receives the telephone record of any resident of this state without the authorization of the customer to whom the record pertains.

(2) This section does not apply to:

(a) Any action by a government agency, or any officer, employee, or agent of such agency, to obtain telephone records in connection with the performance of the official duties of the agency;

(b) A telecommunications company that obtains, uses, discloses, or permits access to any telephone record, either directly or indirectly through its agents, that is:

(i) With the lawful consent of the customer or subscriber;

(ii) Authorized by law;

(iii) Necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(iv) In connection with the sale or transfer of all or part of its business, or the purchase or acquisition of a portion or all of a business, or the migration of a customer from one carrier to another.

(3) A violation of subsection (1)(a), (b), or (c) of this section is a class C felony. A violation of subsection (1)(d) of this section is a gross misdemeanor.

(4) A person who violates this section is subject to legal action for injunctive relief and either actual damages, including mental pain and suffering, or liquidated damages of five thousand dollars per violation, whichever is greater. Reasonable attorneys' fees and other costs of litigation are also recoverable.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Telecommunications company" has the meaning provided in RCW 9.26A.100 and includes "radio communications service companies" as defined in RCW 80.04.010.

(b) "Telephone record" means information retained by a telecommunications company that relates to the telephone number dialed by the customer or the incoming number or call directed to a customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. "Telephone record" does not include any information collected and retained by customers using caller identification or other similar technologies.

(c) "Procure" means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration. [2006 c 193 § 1.]

(2012 Ed.)

9.26A.900 Severability—1990 c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 11 § 6.]

Chapter 9.27 RCW INTERFERENCE WITH COURT

Sections

9.27.015 Interference, obstruction of any court, building, or residence—Violations.

Disturbing school or school meeting: RCW 28A.635.030.

9.27.015 Interference, obstruction of any court, building, or residence—Violations. Whoever, interfering with, obstructing, or impeding the administration of justice, pickets or parades in or near a building housing a court of the state of Washington or any political subdivision thereof, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be guilty of a gross misdemeanor.

Nothing in this section shall interfere with or prevent the exercise by any court of the state of Washington or any political subdivision thereof of its power to punish for contempt. [1971 ex.s. c 302 § 16.]

Additional notes found at www.leg.wa.gov

Chapter 9.31 RCW ESCAPED PRISONER RECAPTURED (Formerly: Escape)

Sections

9.31.090 Escaped prisoner recaptured.

Escape: RCW 9A.76.110 through 9A.76.130.

Limitation of action against officer for permitting escape: RCW 4.16.110.

Parole-revoked offender as escapee: RCW 9.95.130.

Prisoners—Correctional institutions: Chapter 9.94 RCW.

9.31.090 Escaped prisoner recaptured. Every person in custody, under sentence of imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned for a term equal to the unexpired portion of the original term. [1909 c 249 § 89; RRS § 2341.]

Indeterminate sentences: Chapter 9.95 RCW.

Chapter 9.35 RCW IDENTITY CRIMES

Sections

9.35.001 Findings—Intent.
9.35.005 Definitions.
9.35.010 Improperly obtaining financial information.
9.35.020 Identity theft.
9.35.030 Soliciting undesired mail.
9.35.040 Information available to victim.
9.35.050 Incident reports.
9.35.800 Application of Consumer Protection Act.
9.35.900 Effective date—1999 c 368.
9.35.901 Captions not law—1999 c 368.
9.35.902 Severability—1999 c 368.

Block of information appearing as result of identity theft: RCW 19.182.160.

9.35.001 Findings—Intent. The legislature finds that means of identification and financial information are personal and sensitive information such that if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person's privacy, financial security, and other interests. The legislature finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer another person's means of identification or financial information. The legislature intends to penalize for each unlawful act of improperly obtaining, possessing, using, or transferring means of identification or financial information of an individual person. The unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person's means of identification or financial information. Unlawfully obtaining, possessing, or transferring each means of identification or financial information of any individual person, with the requisite intent, is a separate unit of prosecution for each victim and for each act of obtaining, possessing, or transferring of the individual person's means of identification or financial information. [2008 c 207 § 3; 1999 c 368 § 1.]

Finding—Intent—2008 c 207 §§ 3 and 4: "The legislature enacts sections 3 and 4 of this act to expressly reject the interpretation of *State v. Leyda*, 157 Wn.2d 335, 138 P.3d 610 (2006), which holds that the unit of prosecution in identity theft is any one act of either knowingly obtaining, possessing, using, or transferring a single piece of another's identification or financial information, including all subsequent proscribed conduct with that single piece of identification or financial information, when the acts are taken with the requisite intent. The legislature finds that proportionality of punishment requires the need for charging and punishing for obtaining, using, possessing, or transferring any individual person's identification or financial information, with the requisite intent. The legislature specifically intends that each individual who obtains, possesses, uses, or transfers any individual person's identification or financial information, with the requisite intent, be classified separately and punished separately as provided in chapter 9.94A RCW." [2008 c 207 § 1.]

9.35.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(a) Account numbers and balances;
(b) Transactional information concerning an account;
and

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

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

(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a

member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means a person as defined in RCW 9A.04.110.

(5) "Victim" means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity. [2001 c 217 § 1.]

Additional notes found at www.leg.wa.gov

9.35.010 Improperly obtaining financial information. (1) No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association:

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

(b) By knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association with the intent to deceive the customer into releasing financial information or authorizing the release of such information;

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

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

(3) No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association when working in conjunction with a law enforcement agency.

(4) This section does not apply to:

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

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

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

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

(6) A person who violates this section is liable for five hundred dollars or actual damages, whichever is greater, and reasonable attorneys' fees. [2001 c 217 § 8; 1999 c 368 § 2.]

Additional notes found at www.leg.wa.gov

9.35.020 Identity theft. (1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime, under RCW 9.94A.589.

(5) Whenever any series of transactions involving a single person's means of identification or financial information which constitute identity theft would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining the degree of identity theft involved.

(6) Every person who, in the commission of identity theft, shall commit any other crime may be punished therefor as well as for the identity theft, and may be prosecuted for each crime separately.

(7) A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

(8) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(2012 Ed.)

(9) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

(10) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section. [2008 c 207 § 4; 2004 c 273 § 2; 2003 c 53 § 22; 2001 c 217 § 9; 1999 c 368 § 3.]

Finding—Intent—2008 c 207 §§ 3 and 4: See note following RCW 9.35.001.

Finding—Purpose—2004 c 273: "The legislature finds that identity theft and the other types of fraud is a significant problem in the state of Washington, costing our citizens and businesses millions each year. The most common method of accomplishing identity theft and other fraudulent activity is by securing a fraudulently issued driver's license. It is the purpose of this act to significantly reduce identity theft and other fraud by preventing the fraudulent issuance of driver's licenses and identicards." [2004 c 273 § 1.]

Effective date—2004 c 273: "This act takes effect July 1, 2004." [2004 c 273 § 5.]

Additional notes found at www.leg.wa.gov

9.35.030 Soliciting undesired mail. (1) It is unlawful for any person to knowingly use a means of identification or financial information of another person to solicit undesired mail with the intent to annoy, harass, intimidate, torment, or embarrass that person.

(2) Violation of this section is a misdemeanor.

(3) Additionally, a person who violates this section is liable for civil damages of five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees as determined by the court. [2001 c 217 § 10; 2000 c 77 § 1.]

Additional notes found at www.leg.wa.gov

9.35.040 Information available to victim. (1) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association possessing information relating to an actual or potential violation of this chapter, and who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person who has used the victim's means of identification, must, upon written request of the victim, provide copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual violation of this chapter. Nothing in this section requires the information provider to disclose information that it is otherwise prohibited from disclosing by law, except that a law that prohibits disclosing a person's information to third parties shall not be used to deny disclosure of such information to the victim under this section.

(2) Unless the information provider is otherwise willing to verify the victim's identification, the victim shall provide the following as proof of positive identification:

(a) The showing of a government-issued photo identification card or, if providing proof by mail, a copy of a government-issued photo identification card;

(b) A copy of a filed police report evidencing the victim's claim; and

(c) A written statement from the state patrol showing that the state patrol has on file documentation of the victim's identity pursuant to the personal identification procedures in RCW 43.43.760.

(3) The provider may require compensation for the reasonable cost of providing the information requested.

(4) No person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may be held liable for an action taken in good faith to provide information regarding potential or actual violations of this chapter to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any persons alleging to be a victim who comply with subsection (2) of this section which evidences the alleged victim's claim for the purpose of identification and prosecution of violators of this chapter, or to assist a victim in recovery of fines, restitution, rehabilitation of the victim's credit, or such other relief as may be appropriate.

(5) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may decline to provide information pursuant to this section when, in the exercise of good faith and reasonable judgment, it believes this section does not require disclosure of the information.

(6) Nothing in this section creates an obligation on the part of a person, financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association to retain or maintain information or records that they are not otherwise required to retain or maintain in the ordinary course of its business.

(7) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. It is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. The burden of proof in an action alleging a violation of this section shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set forth in RCW 19.182.120. For purposes of a judgment awarded pursuant to an action by a consumer under chapter 19.86 RCW, the consumer shall be awarded actual damages. However, where there has been willful failure to comply with any requirement imposed under this section, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court. [2001 c 217 § 2.]

Additional notes found at www.leg.wa.gov

9.35.050 Incident reports. (1) A person who has learned or reasonably suspects that his or her financial information or means of identification has been unlawfully obtained, used by, or disclosed to another, as described in this chapter, may file an incident report with a law enforcement agency, by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, place of busi-

ness, or place where the crime occurred. The law enforcement agency shall create a police incident report of the matter and provide the complainant with a copy of that report, and may refer the incident report to another law enforcement agency.

(2) Nothing in this section shall be construed to require a law enforcement agency to investigate reports claiming identity theft. An incident report filed under this section is not required to be counted as an open case for purposes of compiling open case statistics. [2008 c 207 § 2.]

9.35.800 Application of Consumer Protection Act.

The legislature finds that the practices covered by RCW 9.35.010 and 9.35.020 are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. Violations of RCW 9.35.010 or 9.35.020 are not reasonable in relation to the development and preservation of business. A violation of RCW 9.35.010 or 9.35.020 is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

Nothing in RCW 9.35.010 or 9.35.020 limits a victim's ability to receive treble damages under RCW 19.86.090. [2001 c 217 § 7.]

Additional notes found at www.leg.wa.gov

9.35.900 Effective date—1999 c 368. This act takes effect January 1, 2000. [1999 c 368 § 4.]

9.35.901 Captions not law—1999 c 368. Captions used in this chapter are not part of the law. [1999 c 368 § 5.]

9.35.902 Severability—1999 c 368. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 368 § 6.]

Chapter 9.38 RCW FALSE REPRESENTATIONS

Sections

9.38.010	False representation concerning credit.
9.38.015	False statement by deposit account applicant.
9.38.020	False representation concerning title.
9.38.060	Digital signature violations.

Domestic insurers, corrupt practices: RCW 48.06.190.

Elections

falsification by voters: Chapter 29A.84 RCW.

initiative and referendum petitions: RCW 29A.84.230.

recall petitions: Chapter 29A.56 RCW.

Employment, obtaining by false recommendation: RCW 49.44.040.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Fraud: Chapter 9A.60 RCW.

Honey act, falsification: RCW 69.28.180.

Insurance, unfair practices: Chapter 48.30 RCW.

Liquor permit falsification: RCW 66.20.200.

Marriage affidavit: RCW 26.04.210.

Motor vehicles, certificates of title: RCW 46.12.750.

Pharmacy licensing: RCW 18.64.250.

Public assistance falsification: RCW 74.08.055.

Warehouse receipts and documents, falsifying: Chapter 22.32 RCW.

9.38.010 False representation concerning credit.

Every person who, with intent thereby to obtain credit or financial rating, shall willfully make any false statement in writing of his or her assets or liabilities to any person with whom he or she may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor. [2011 c 336 § 296; 1909 c 249 § 368; RRS § 2620.]

9.38.015 False statement by deposit account applicant. (1) It is a gross misdemeanor for a deposit account applicant to knowingly make any false statement to a financial institution regarding:

- (a) The applicant's identity;
- (b) Past convictions for crimes involving fraud or deception; or
- (c) Outstanding judgments on checks or drafts issued by the applicant.

(2) Each violation of subsection (1) of this section after the third violation is a class C felony punishable as provided in chapter 9A.20 RCW. [1995 c 186 § 4.]

Additional notes found at www.leg.wa.gov

9.38.020 False representation concerning title. Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor. [2000 c 250 § 9A-821; 1909 c 249 § 369; RRS § 2621.]

Additional notes found at www.leg.wa.gov

9.38.060 Digital signature violations. (1) A person shall not knowingly misrepresent the person's identity or authorization to obtain a public key certificate used to reference a private key for creating a digital signature.

(2) A person shall not knowingly forge a digital signature as defined in RCW 19.34.020(16).

(3) A person shall not knowingly present a public key certificate for which the person is not the owner of the corresponding private key in order to obtain unauthorized access to information or engage in an unauthorized transaction.

(4) The definitions in RCW 19.34.020 apply to this section.

(5) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW. [2001 c 39 § 1.]

**Chapter 9.40 RCW
FIRE, CRIMES RELATING TO**

Sections

9.40.040	Operating engine or boiler without spark arrester.
9.40.100	Tampering with fire alarm or firefighting equipment—False alarm—Penalties.
9.40.105	Tampering with fire alarm or firefighting equipment—Intent to commit arson—Penalty.

(2012 Ed.)

9.40.110	Incendiary devices—Definitions.
9.40.120	Incendiary devices—Penalty.
9.40.130	Incendiary devices—Exceptions.

Arson: Chapter 9A.48 RCW.

Burning without permit in fire protection district—Penalty: RCW 52.12.101, 52.12.105.

County fire regulations: RCW 36.43.040.

Doors of buildings used by public: RCW 70.54.070.

Explosives, crimes relating to: Chapter 70.74 RCW.

Forest fire protection: Chapter 76.04 RCW.

Fraudulent destruction of insured property: RCW 48.30.220.

Special rights of action: Chapter 4.24 RCW.

State parks, fire violations: RCW 79A.05.165.

9.40.040 Operating engine or boiler without spark arrester. Every person who shall operate or permit to be operated in dangerous proximity to any brush, grass or other inflammable material, any spark-emitting engine or boiler which is not equipped with a modern spark-arrester, in good condition, shall be guilty of a misdemeanor. [1929 c 172 § 1; 1909 c 249 § 272; RRS § 2524.]

9.40.100 Tampering with fire alarm or firefighting equipment—False alarm—Penalties. Any person who willfully and without cause tampers with, molests, injures or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any firefighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor. This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, by a fire department or the chief of the Washington state patrol, through the director of fire protection. [2003 c 53 § 23; 1995 c 369 § 3; 1990 c 177 § 1; 1986 c 266 § 80; 1967 c 204 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.40.105 Tampering with fire alarm or firefighting equipment—Intent to commit arson—Penalty. Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any firefighting equipment with the intent to commit arson, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 24.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.40.110 Incendiary devices—Definitions. For the purposes of RCW 9.40.110 through 9.40.130, as now or hereafter amended, unless the context indicates otherwise:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means any material, substance, device, or combination thereof which is capable of supplying the initial ignition and/or fuel for a fire and is designed to be used as an instrument of wilful destruction. However, no

device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for purposes of this section. [1971 ex.s. c 302 § 3; 1969 ex.s. c 79 § 2.]

Additional notes found at www.leg.wa.gov

9.40.120 Incendiary devices—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a class B felony punishable according to chapter 9A.20 RCW, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than ten years. [2003 c 53 § 25; 1999 c 352 § 5; 1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.40.130 Incendiary devices—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firefighters, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [2007 c 218 § 62; 1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

Chapter 9.41 RCW

FIREARMS AND DANGEROUS WEAPONS

Sections

9.41.010	Terms defined.
9.41.040	Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties.
9.41.042	Children—Permissible firearm possession.
9.41.045	Possession by offenders.
9.41.047	Restoration of possession rights.
9.41.050	Carrying firearms.
9.41.060	Exceptions to restrictions on carrying firearms.
9.41.065	Correctional employees—Effect of exemption from firearms restrictions—Liability limited.
9.41.070	Concealed pistol license—Application—Fee—Renewal.
9.41.073	Concealed pistol license—Reciprocity.
9.41.075	Concealed pistol license—Revocation.
9.41.080	Delivery to ineligible persons.
9.41.090	Dealer deliveries regulated—Hold on delivery.
9.41.094	Waiver of confidentiality.
9.41.097	Supplying information on persons purchasing pistols or applying for concealed pistol licenses.
9.41.0975	Officials and agencies—Immunity, writ of mandamus.
9.41.098	Forfeiture of firearms—Disposition—Confiscation.
9.41.100	Dealer licensing and registration required.
9.41.110	Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.
9.41.120	Firearms as loan security.
9.41.122	Out-of-state purchasing.
9.41.124	Purchasing by nonresidents.
9.41.129	Recordkeeping requirements.
9.41.135	Verification of licenses and registration—Notice to federal government.
9.41.140	Alteration of identifying marks—Exceptions.
9.41.171	Alien possession of firearms—Requirements—Penalty.

9.41.173	Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement.
9.41.175	Alien possession of firearms—Possession without license—Conditions.
9.41.185	Coyote getters.
9.41.190	Unlawful firearms—Exceptions.
9.41.220	Unlawful firearms and parts contraband.
9.41.225	Use of machine gun in felony—Penalty.
9.41.230	Aiming or discharging firearms, dangerous weapons.
9.41.240	Possession of pistol by person from eighteen to twenty-one.
9.41.250	Dangerous weapons—Penalty.
9.41.251	Dangerous weapons—Application of restrictions to law enforcement, firefighting, rescue, and military personnel.
9.41.260	Dangerous exhibitions.
9.41.270	Weapons apparently capable of producing bodily harm—Unlawful carrying or handling—Penalty—Exceptions.
9.41.280	Possessing dangerous weapons on school facilities—Penalty—Exceptions.
9.41.290	State preemption.
9.41.300	Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty.
9.41.310	Information pamphlet.
9.41.320	Fireworks.
9.41.800	Surrender of weapons or licenses—Prohibition on future possession or licensing.
9.41.810	Penalty.

Carrying loaded rifle or shotgun in vehicle: RCW 77.15.460.

Explosives: Chapter 70.74 RCW.

Possessing a stolen firearm: RCW 9A.56.310.

Shooting firearm from, across, or along public highway: RCW 77.15.460.

Theft of a firearm: RCW 9A.56.300.

9.41.010 Terms defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(5) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(6) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(7) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(8) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(9) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(10) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(11) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(12) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(13) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(14) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(15) "Sell" refers to the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money.

(16) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;

(c) Child molestation in the second degree;

(d) Incest when committed against a child under age fourteen;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under *RCW 9.94A.602; or

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

(17) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(18) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(19) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. [2009 c 216 § 1; 2001 c 300 § 2; 1997 c 338 § 46; 1996 c 295 § 1. Prior: 1994 sp.s. c 7 § 401; 1994 c 121 § 1; prior: 1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Reviser's note: *(1) RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties. (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be pre-

cluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours

and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense. [2011 c 193 § 1; 2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Severability—2005 c 453: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 453 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.042 Children—Permissible firearm possession. RCW 9.41.040(2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

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(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty. [2003 c 53 § 27; 1999 c 143 § 2; 1994 sp.s. c 7 § 403.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.045 Possession by offenders. As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to RCW 9.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions as provided for in RCW 9.94A.633, 9.94A.716, or 9.94A.737. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by community corrections officers and turned over to the Washington state patrol for disposal as provided in RCW 9.41.098. [2009 c 28 § 2; 1991 c 221 § 1.]

Effective date—2009 c 28: See note following RCW 2.24.040.

9.41.047 Restoration of possession rights. (1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting or committing court shall forward within three judicial days after conviction or entry of the commitment order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction or commitment, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady hand-gun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall

determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4). [2011 c 193 § 2; 2009 c 293 § 2; 2005 c 453 § 2; 1996 c 295 § 3. Prior: 1994 sp.s. c 7 § 404.]

Severability—2005 c 453: See note following RCW 9.41.040.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.050 Carrying firearms. (1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class

1 civil infraction under chapter 7.80 RCW and shall be punished accordingly pursuant to chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction.

(2)(a) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) The pistol is on the licensee's person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(3)(a) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(4) Nothing in this section permits the possession of firearms illegal to possess under state or federal law. [2003 c 53 § 28; 1997 c 200 § 1; 1996 c 295 § 4; 1994 sp.s. c 7 § 405; 1982 1st ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.060 Exceptions to restrictions on carrying firearms. The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and community corrections officers as long as they are employed as such who have completed government-sponsored law enforcement firearms training and have been subject to a check through the national instant criminal background check system or an equivalent background check within the past five years, or other law enforcement officers of this state or another state. Correctional personnel and community corrections officers seeking the waiver provided for by this section are required to pay for any background check that is needed in order to exercise the waiver;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license. [2011 c 221 § 1; 2005 c 453 § 3; 1998 c 253 § 2; 1996 c 295 § 5; 1995 c 392 § 1; 1994 sp.s. c 7 § 406; 1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

Severability—2005 c 453: See note following RCW 9.41.040.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.065 Correctional employees—Effect of exemption from firearms restrictions—Liability limited. The exemptions from firearms restrictions in RCW 9.41.060 and 9.41.300 for correctional personnel and community corrections officers who complete government-sponsored law enforcement firearms training do not create a duty on the part of the state or local governmental entities with respect to the off-duty conduct of correctional personnel and community corrections officers involving the use or misuse of a firearm.

The state of Washington, local governmental entities, and their officers, employees, and agents are not liable for any civil damages caused by the use or misuse of a firearm by off-duty correctional personnel or community corrections officers based on any act or omission in the provision of government-sponsored firearms training to the correctional personnel or community corrections officers. [2011 c 221 § 3.]

9.41.070 Concealed pistol license—Application—Fee—Renewal. (1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045, or is prohibited from possessing a firearm under federal law;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2)(a) The issuing authority shall conduct a check through the national instant criminal background check system, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm, or is prohibited from possessing a firearm under federal law, and therefore ineligible for a concealed pistol license.

(b) The issuing authority shall deny a permit to anyone who is found to be prohibited from possessing a firearm under federal or state law.

(c) This subsection applies whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include two complete sets of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The application shall contain questions about the applicant's eligibility under RCW 9.41.040 and federal law to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. If the applicant is not a United States citizen, the applicant must provide the applicant's country of citizenship, United States issued alien number or admission number, and the basis on which the applicant claims to be exempt from federal prohibitions on firearm possession by aliens. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall, if applicable, meet the additional requirements of RCW 9.41.173 and produce proof of compliance with RCW 9.41.173 upon application. The license may be in triplicate or in a form to be prescribed by the department of licensing.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
 - (b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;
 - (c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and
 - (d) Three dollars to the firearms range account in the general fund.
- (6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and
- (c) Three dollars to the firearms range account in the general fund.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state wildlife account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

(b) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

- (a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;
- (b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or
- (c) Anywhere in the state if the applicant is a nonresident.

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state:

(a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee. [2011 c 294 § 1. Prior: 2009 c 216 § 5; 2009 c 59 § 1; 2002 c 302 § 703; 1999 c 222 § 2; 1996 c 295 § 6; 1995 c 351 § 1; prior: 1994 sp.s. c 7 § 407; 1994 c 190 § 2; 1992 c 168 § 1; 1990 c 195 § 6; prior: 1988 c 263 § 10; 1988 c 223 § 1; 1988 c 219 § 1; 1988 c 36 § 1; 1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Finding—Hunter education program: "The legislature finds that the hunter education program offers classes that all new hunters in the state are legally required to complete, but that budget reductions have limited the assistance that may be provided to the volunteers who conduct these classes. A portion of the funds for this program is provided by statute exclusively for printing and distributing the hunter safety pamphlet. While this pamphlet should remain the highest spending priority for these funds, there is a surplus in the account which could assist with other activities by the volunteers conducting the hunter education program." [1999 c 222 § 1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.073 Concealed pistol license—Reciprocity.

(1)(a) A person licensed to carry a pistol in a state the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the state of Washington is authorized to carry a concealed pistol in this state if:

(i) The licensing state does not issue concealed pistol licenses to persons under twenty-one years of age; and

(ii) The licensing state requires mandatory fingerprint-based background checks of criminal and mental health history for all persons who apply for a concealed pistol license.

(b) This section applies to a license holder from another state only while the license holder is not a resident of this state. A license holder from another state must carry the handgun in compliance with the laws of this state.

(2) The attorney general shall periodically publish a list of states the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the state of Washington and which meet the requirements of subsection (1)(a)(i) and (ii) of this section. [2004 c 148 § 1.]

9.41.075 Concealed pistol license—Revocation. (1)

The license shall be revoked by the license-issuing authority immediately upon:

(a) Discovery by the issuing authority that the person was ineligible under RCW 9.41.070 for a concealed pistol license when applying for the license or license renewal;

(b) Conviction of the licensee, or the licensee being found not guilty by reason of insanity, of an offense, or commitment of the licensee for mental health treatment, that

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makes a person ineligible under RCW 9.41.040 to possess a firearm;

(c) Conviction of the licensee for a third violation of this chapter within five calendar years; or

(d) An order that the licensee forfeit a firearm under RCW 9.41.098(1)(d).

(2)(a) Unless the person may lawfully possess a pistol without a concealed pistol license, an ineligible person to whom a concealed pistol license was issued shall, within fourteen days of license revocation, lawfully transfer ownership of any pistol acquired while the person was in possession of the license.

(b) Upon discovering a person issued a concealed pistol license was ineligible for the license, the issuing authority shall contact the department of licensing to determine whether the person purchased a pistol while in possession of the license. If the person did purchase a pistol while in possession of the concealed pistol license, if the person may not lawfully possess a pistol without a concealed pistol license, the issuing authority shall require the person to present satisfactory evidence of having lawfully transferred ownership of the pistol. The issuing authority shall require the person to produce the evidence within fifteen days of the revocation of the license.

(3) When a licensee is ordered to forfeit a firearm under RCW 9.41.098(1)(d), the issuing authority shall:

(a) On the first forfeiture, revoke the license for one year;

(b) On the second forfeiture, revoke the license for two years; or

(c) On the third or subsequent forfeiture, revoke the license for five years.

Any person whose license is revoked as a result of a forfeiture of a firearm under RCW 9.41.098(1)(d) may not reapply for a new license until the end of the revocation period.

(4) The issuing authority shall notify, in writing, the department of licensing of the revocation of a license. The department of licensing shall record the revocation. [2005 c 453 § 4; 1994 sp.s. c 7 § 408.]

Severability—2005 c 453: See note following RCW 9.41.040.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.080 Delivery to ineligible persons. No person may deliver a firearm to any person whom he or she has reasonable cause to believe is ineligible under RCW 9.41.040 to possess a firearm. Any person violating this section is guilty of a class C felony, punishable under chapter 9A.20 RCW. [1994 sp.s. c 7 § 409; 1935 c 172 § 8; RRS § 2516-8.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.090 Dealer deliveries regulated—Hold on delivery. (1) In addition to the other requirements of this chapter, no dealer may deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the dealer has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (5) of this section. For purposes of this subsection (1)(a), a "valid

concealed pistol license" does not include a temporary emergency license, and does not include any license issued before July 1, 1996, unless the issuing agency conducted a records search for disqualifying crimes under RCW 9.41.070 at the time of issuance;

(b) The dealer is notified in writing by the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a pistol under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or

(c) Five business days, meaning days on which state offices are open, have elapsed from the time of receipt of the application for the purchase thereof as provided herein by the chief of police or sheriff designated in subsection (5) of this section, and, when delivered, the pistol shall be securely wrapped and shall be unloaded. However, if the purchaser does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days, the waiting period under this subsection (1)(c) shall be up to sixty days.

(2)(a) Except as provided in (b) of this subsection, in determining whether the purchaser meets the requirements of RCW 9.41.040, the chief of police or sheriff, or the designee of either, shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 to possess a firearm.

(b) Once the system is established, a dealer shall use the state system and national instant criminal background check system, provided for by the Brady Handgun Violence Prevention Act (18 U.S.C. Sec. 921 et seq.), to make criminal background checks of applicants to purchase firearms. However, a chief of police or sheriff, or a designee of either, shall continue to check the department of social and health services' electronic database and with other agencies or resources as appropriate, to determine whether applicants are ineligible under RCW 9.41.040 to possess a firearm.

(3) In any case under subsection (1)(c) of this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the dealer shall hold the delivery of the pistol until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the dealer so that the hold may be released if the warrant was for an offense other than an offense making a person ineligible under RCW 9.41.040 to possess a pistol.

(4) In any case where the chief or sheriff of the local jurisdiction has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for an offense making a person ineligible under RCW 9.41.040 to possess a pistol, or (e) an arrest for an offense making a person ineligible under RCW 9.41.040 to possess a pistol, if the records of disposition have not yet been reported or entered sufficiently to determine eli-

gibility to purchase a pistol, the local jurisdiction may hold the sale and delivery of the pistol beyond five days up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court or municipal court for good cause shown. A dealer shall be notified of each hold placed on the sale by local law enforcement and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(5) At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the dealer an application containing his or her full name, residential address, date and place of birth, race, and gender; the date and hour of the application; the applicant's driver's license number or state identification card number; a description of the pistol including the make, model, caliber and manufacturer's number if available at the time of applying for the purchase of a pistol. If the manufacturer's number is not available, the application may be processed, but delivery of the pistol to the purchaser may not occur unless the manufacturer's number is recorded on the application by the dealer and transmitted to the chief of police of the municipality or the sheriff of the county in which the purchaser resides; and a statement that the purchaser is eligible to possess a pistol under RCW 9.41.040.

The application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. State permission to purchase a firearm is not a defense to a federal prosecution.

The purchaser shall be given a copy of the department of fish and wildlife pamphlet on the legal limits of the use of firearms, firearms safety, and the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The dealer shall, by the end of the business day, sign and attach his or her address and deliver a copy of the application and such other documentation as required under subsection (1) of this section to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident. The triplicate shall be retained by the dealer for six years. The dealer shall deliver the pistol to the purchaser following the period of time specified in this section unless the dealer is notified of an investigative hold under subsection (4) of this section in writing by the chief of police of the municipality or the sheriff of the county, whichever is applicable, denying the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser is not eligible to possess a pistol under RCW 9.41.040 or 9.41.045, or federal law.

The chief of police of the municipality or the sheriff of the county shall retain or destroy applications to purchase a pistol in accordance with the requirements of 18 U.S.C. Sec. 922.

(6) A person who knowingly makes a false statement regarding identity or eligibility requirements on the applica-

tion to purchase a pistol is guilty of false swearing under RCW 9A.72.040.

(7) This section does not apply to sales to licensed dealers for resale or to the sale of antique firearms. [1996 c 295 § 8. Prior: 1994 sp.s. c 7 § 410; 1994 c 264 § 1; 1988 c 36 § 2; 1985 c 428 § 4; 1983 c 232 § 4; 1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.094 Waiver of confidentiality. A signed application to purchase a pistol shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release, to an inquiring court or law enforcement agency, information relevant to the applicant's eligibility to purchase a pistol to an inquiring court or law enforcement agency. [1994 sp.s. c 7 § 411.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses. (1) The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.173; (b) an issuing authority pursuant to RCW 9.41.047 or 9.41.070; (c) a chief of police or sheriff pursuant to RCW 9.41.090 or 9.41.173; (d) a court or law enforcement agency pursuant to subsection (1) of this section, shall not be disclosed except as provided in RCW 42.56.240(4). [2009 c 216 § 6; 2005 c 274 § 202; 1994 sp.s. c 7 § 412; 1983 c 232 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.0975 Officials and agencies—Immunity, writ of mandamus. (1) The state, local governmental entities, any public or private agency, and the employees of any state or local governmental entity or public or private agency, acting in good faith, are immune from liability:

(a) For failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful;

(b) For preventing the sale or transfer of a firearm to a person who may lawfully receive or possess a firearm;

(c) For issuing a concealed pistol license or alien firearm license to a person ineligible for such a license;

(d) For failing to issue a concealed pistol license or alien firearm license to a person eligible for such a license;

(e) For revoking or failing to revoke an issued concealed pistol license or alien firearm license;

(f) For errors in preparing or transmitting information as part of determining a person's eligibility to receive or possess a firearm, or eligibility for a concealed pistol license or alien firearm license;

(g) For issuing a dealer's license to a person ineligible for such a license; or

(h) For failing to issue a dealer's license to a person eligible for such a license.

(2) An application may be made to a court of competent jurisdiction for a writ of mandamus:

(a) Directing an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused;

(b) Directing a law enforcement agency to approve an application to purchase wrongfully denied;

(c) Directing that erroneous information resulting either in the wrongful refusal to issue a concealed pistol license or alien firearm license or in the wrongful denial of a purchase application be corrected; or

(d) Directing a law enforcement agency to approve a dealer's license wrongfully denied.

The application for the writ may be made in the county in which the application for a concealed pistol license or alien firearm license or to purchase a pistol was made, or in Thurston county, at the discretion of the petitioner. A court shall provide an expedited hearing for an application brought under this subsection (2) for a writ of mandamus. A person granted a writ of mandamus under this subsection (2) shall be awarded reasonable attorneys' fees and costs. [2009 c 216 § 7; 1996 c 295 § 9; 1994 sp.s. c 7 § 413.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.098 Forfeiture of firearms—Disposition—Confiscation. (1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or dis-

played, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a nonfelony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department *bureau of alcohol, tobacco, and firearms are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain

a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. The Washington state patrol may retain any proceeds of an auction or trade.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section. [2003 c 39 § 5; 1996 c 295 § 10; 1994 sp.s. c 7 § 414; 1993 c 243 § 1; 1989 c 222 § 8; 1988 c 223 § 2. Prior: 1987 c 506 § 91; 1987 c 373 § 7; 1986 c 153 § 1; 1983 c 232 § 6.]

***Reviser's note:** The bureau of alcohol, tobacco and firearms of the department of the treasury was transferred to the department of justice on November 25, 2002. See 6 U.S.C. Sec. 531, Public Law 107-296. The "bureau of alcohol, tobacco and firearms" was renamed the "bureau of alcohol, tobacco, firearms and explosives."

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Additional notes found at www.leg.wa.gov

9.41.100 Dealer licensing and registration required.

Every dealer shall be licensed as provided in RCW 9.41.110 and shall register with the department of revenue as provided in chapters 82.04 and 82.32 RCW. [1994 sp.s. c 7 § 415; 1935 c 172 § 10; RRS § 2516-10.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.110 Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.

(1) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any pistol without being licensed as provided in this section.

(2) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any firearm other than a pistol without being licensed as provided in this section.

(3) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any ammunition without being licensed as provided in this section.

(4) The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses

in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell firearms within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.810. A licensing authority shall forward a copy of each license granted to the department of licensing. The department of licensing shall notify the department of revenue of the name and address of each dealer licensed under this section.

(5)(a) A licensing authority shall, within thirty days after the filing of an application of any person for a dealer's license, determine whether to grant the license. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card, or has not been a resident of the state for the previous consecutive ninety days, the licensing authority shall have up to sixty days to determine whether to issue a license. No person shall qualify for a license under this section without first receiving a federal firearms license and undergoing fingerprinting and a background check. In addition, no person ineligible to possess a firearm under RCW 9.41.040 or ineligible for a concealed pistol license under RCW 9.41.070 shall qualify for a dealer's license.

(b) A dealer shall require every employee who may sell a firearm in the course of his or her employment to undergo fingerprinting and a background check. An employee must be eligible to possess a firearm, and must not have been convicted of a crime that would make the person ineligible for a concealed pistol license, before being permitted to sell a firearm. Every employee shall comply with requirements concerning purchase applications and restrictions on delivery of pistols that are applicable to dealers.

(6)(a) Except as otherwise provided in (b) of this subsection, the business shall be carried on only in the building designated in the license. For the purpose of this section, advertising firearms for sale shall not be considered the carrying on of business.

(b) A dealer may conduct business temporarily at a location other than the building designated in the license, if the temporary location is within Washington state and is the location of a gun show sponsored by a national, state, or local organization, or an affiliate of any such organization, devoted to the collection, competitive use, or other sporting use of firearms in the community. Nothing in this subsection (6)(b) authorizes a dealer to conduct business in or from a motorized or towed vehicle.

In conducting business temporarily at a location other than the building designated in the license, the dealer shall comply with all other requirements imposed on dealers by RCW 9.41.090, 9.41.100, and 9.41.110. The license of a dealer who fails to comply with the requirements of RCW 9.41.080 and 9.41.090 and subsection (8) of this section while conducting business at a temporary location shall be revoked, and the dealer shall be permanently ineligible for a dealer's license.

(7) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises in the area where firearms are sold, or at the temporary location, where it can easily be read.

(8)(a) No pistol may be sold: (i) In violation of any provisions of RCW 9.41.010 through 9.41.810; nor (ii) may a pistol be sold under any circumstances unless the purchaser is personally known to the dealer or shall present clear evidence of his or her identity.

(b) A dealer who sells or delivers any firearm in violation of RCW 9.41.080 is guilty of a class C felony. In addition to any other penalty provided for by law, the dealer is subject to mandatory permanent revocation of his or her dealer's license and permanent ineligibility for a dealer's license.

(c) The license fee for pistols shall be one hundred twenty-five dollars. The license fee for firearms other than pistols shall be one hundred twenty-five dollars. The license fee for ammunition shall be one hundred twenty-five dollars. Any dealer who obtains any license under subsection (1), (2), or (3) of this section may also obtain the remaining licenses without payment of any fee. The fees received under this section shall be deposited in the state general fund.

(9)(a) A true record in triplicate shall be made of every pistol sold, in a book kept for the purpose, the form of which may be prescribed by the director of licensing and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, and place of birth of the purchaser and a statement signed by the purchaser that he or she is not ineligible under RCW 9.41.040 to possess a firearm.

(b) One copy shall within six hours be sent by certified mail to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident; the duplicate the dealer shall within seven days send to the director of licensing; the triplicate the dealer shall retain for six years.

(10) Subsections (2) through (9) of this section shall not apply to sales at wholesale.

(11) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses. The department shall provide a single application form for dealer's licenses and a single license form which shall indicate the type or types of licenses granted.

(12) Except as provided in RCW 9.41.090, every city, town, and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from requiring the dealer to secure an individual permit for each sale. [2009 c 479 § 10; 1994 sp.s. c 7 § 416; 1979 c 158 § 2; 1969 ex.s. c 227 § 4; 1963 c 163 § 1; 1961 c 124 § 8; 1935 c 172 § 11; RRS § 2516-11.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.120 Firearms as loan security. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or

stock of pistols but shall not deposit or pledge the same with any other person. [1961 c 124 § 9; 1935 c 172 § 12; RRS § 2516-12.]

Pawnbrokers and secondhand dealers: Chapter 19.60 RCW.

9.41.122 Out-of-state purchasing. Residents of Washington may purchase rifles and shotguns in a state other than Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such purchase is made. [1970 ex.s. c 74 § 1. Formerly RCW 19.70.010.]

9.41.124 Purchasing by nonresidents. Residents of a state other than Washington may purchase rifles and shotguns in Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such persons reside. [1970 ex.s. c 74 § 2. Formerly RCW 19.70.020.]

9.41.129 Recordkeeping requirements. The department of licensing may keep copies or records of applications for concealed pistol licenses provided for in RCW 9.41.070, copies or records of applications for alien firearm licenses, copies or records of applications to purchase pistols provided for in RCW 9.41.090, and copies or records of pistol transfers provided for in RCW 9.41.110. The copies and records shall not be disclosed except as provided in RCW 42.56.240(4). [2005 c 274 § 203; 1994 sp.s. c 7 § 417.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.41.135 Verification of licenses and registration—Notice to federal government. (1) At least once every twelve months, the department of licensing shall obtain a list of dealers licensed under 18 U.S.C. Sec. 923(a) with business premises in the state of Washington from the United States bureau of alcohol, tobacco, and firearms. The department of licensing shall verify that all dealers on the list provided by the bureau of alcohol, tobacco, and firearms are licensed and registered as required by RCW 9.41.100.

(2) At least once every twelve months, the department of licensing shall obtain from the department of revenue and the department of revenue shall transmit to the department of licensing a list of dealers registered with the department of revenue, and a list of dealers whose names and addresses were forwarded to the department of revenue by the department of licensing under RCW 9.41.110, who failed to register with the department of revenue as required by RCW 9.41.100.

(3) At least once every twelve months, the department of licensing shall notify the bureau of alcohol, tobacco, and fire-

arms of all dealers licensed under 18 U.S.C. Sec. 923(a) with business premises in the state of Washington who have not complied with the licensing or registration requirements of RCW 9.41.100. In notifying the bureau of alcohol, tobacco, and firearms, the department of licensing shall not specify whether a particular dealer has failed to comply with licensing requirements or has failed to comply with registration requirements. [1995 c 318 § 6; 1994 sp.s. c 7 § 418.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.140 Alteration of identifying marks—Exceptions. No person may change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm. Possession of any firearm upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This section shall not apply to replacement barrels in old firearms, which barrels are produced by current manufacturers and therefore do not have the markings on the barrels of the original manufacturers who are no longer in business. This section also shall not apply if the changes do not make the firearm illegal for the person to possess under state or federal law. [1994 sp.s. c 7 § 419; 1961 c 124 § 10; 1935 c 172 § 14; RRS § 2516-14.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.171 Alien possession of firearms—Requirements—Penalty. It is a class C felony for any person who is not a citizen of the United States to carry or possess any firearm, unless the person: (1) Is a lawful permanent resident; (2) has obtained a valid alien firearm license pursuant to RCW 9.41.173; or (3) meets the requirements of RCW 9.41.175. [2009 c 216 § 2.]

9.41.173 Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement. (1) In order to obtain an alien firearm license, a nonimmigrant alien residing in Washington must apply to the sheriff of the county in which he or she resides.

(2) The sheriff of the county shall within sixty days after the filing of an application of a nonimmigrant alien residing in the state of Washington, issue an alien firearm license to such person to carry or possess a firearm for the purposes of hunting and sport shooting. The license shall be good for two years. The issuing authority shall not refuse to accept completed applications for alien firearm licenses during regular business hours. An application for a license may not be denied, unless the applicant's alien firearm license is in a revoked status, or the applicant:

(a) Is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) Is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(c) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense; or

(d) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

No license application shall be granted to a nonimmigrant alien convicted of a felony unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or unless RCW 9.41.040 (3) or (4) applies.

(3) The sheriff shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, not more than two complete sets of fingerprints, and signature of the applicant, a copy of the applicant's passport and visa showing the applicant is in the country legally, and a valid Washington hunting license or documentation that the applicant is a member of a sport shooting club.

A signed application for an alien firearm license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for an alien firearm license to an inquiring court or law enforcement agency.

The application for an original license shall include a complete set of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a firearm. The nonimmigrant alien applicant shall be required to produce a passport and visa as evidence of being in the country legally.

The license may be in triplicate or in a form to be prescribed by the department of licensing. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an online format, all information received under this section.

(5) The sheriff has the authority to collect a nonrefundable fee, paid upon application, for the two-year license. The

fee shall be fifty dollars plus additional charges imposed by the Washington state patrol and the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license. The fee shall be retained by the sheriff.

(6) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the sheriff.

(7) A political subdivision of the state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(8) A person who knowingly makes a false statement regarding citizenship or identity on an application for an alien firearm license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the alien firearm license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for an alien firearm license. [2009 c 216 § 3.]

9.41.175 Alien possession of firearms—Possession without license—Conditions. (1) A nonimmigrant alien, who is not a resident of Washington or a citizen of Canada, may carry or possess any firearm without having first obtained an alien firearm license if the nonimmigrant alien possesses:

(a) A valid passport and visa showing he or she is in the country legally;

(b) If required under federal law, an approved United States department of justice ATF-6 NIA application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens; and

(c)(i) A valid hunting license issued by a state or territory of the United States; or

(ii) An invitation to participate in a trade show or sport shooting event being conducted in this state, another state, or another country that is contiguous with this state.

(2) A citizen of Canada may carry or possess any firearm so long as he or she possesses:

(a) Valid documentation as required for entry into the United States;

(b) If required under federal law, an approved United States department of justice ATF-6 NIA application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens; and

(c)(i) A valid hunting license issued by a state or territory of the United States; or

(ii) An invitation to participate in a trade show or sport shooting event being conducted in this state, another state, or another country that is contiguous with this state.

(3) For purposes of subsections (1) and (2) of this section, the firearms may only be possessed for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used. Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. [2009 c 216 § 4.]

9.41.185 Coyote getters. The use of "coyote getters" or similar spring-triggered shell devices shall not constitute a violation of any of the laws of the state of Washington when the use of such "coyote getters" is authorized by the state department of agriculture and/or the state department of fish and wildlife in cooperative programs with the United States Fish and Wildlife Service, for the purpose of controlling or eliminating coyotes harmful to livestock and game animals on range land or forest areas. [1999 c 143 § 3; 1988 c 36 § 3; 1965 c 46 § 1.]

9.41.190 Unlawful firearms—Exceptions. (1) It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, short-barreled shotgun, or short-barreled rifle; or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle; or to assemble or repair any machine gun, short-barreled shotgun, or short-barreled rifle.

(2) This section shall not apply to:

(a) Any peace officer in the discharge of official duty or traveling to or from official duty, or to any officer or member of the armed forces of the United States or the state of Washington in the discharge of official duty or traveling to or from official duty; or

(b) A person, including an employee of such person if the employee has undergone fingerprinting and a background check, who or which is exempt from or licensed under federal law, and engaged in the production, manufacture, repair, or testing of machine guns, short-barreled shotguns, or short-barreled rifles:

(i) To be used or purchased by the armed forces of the United States;

(ii) To be used or purchased by federal, state, county, or municipal law enforcement agencies; or

(iii) For exportation in compliance with all applicable federal laws and regulations.

(3) It shall be an affirmative defense to a prosecution brought under this section that the machine gun, short-barreled shotgun, or short-barreled rifle was acquired prior to July 1, 1994, and is possessed in compliance with federal law.

(4) Any person violating this section is guilty of a class C felony. [1994 sp.s. c 7 § 420; 1982 1st ex.s. c 47 § 2; 1933 c 64 § 1; RRS § 2518-1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.220 Unlawful firearms and parts contraband. All machine guns, short-barreled shotguns, or short-barreled rifles, or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle, illegally held or illegally possessed are hereby declared to be contraband, and it shall be the duty of all peace officers, and/or any officer or member of the armed forces of the United States or the state of Washington, to seize said machine gun, short-bar-

reled shotgun, or short-barreled rifle, or parts thereof, wherever and whenever found. [1994 sp.s. c 7 § 421; 1933 c 64 § 4; RRS § 2518-4.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.225 Use of machine gun in felony—Penalty. It is unlawful for a person, in the commission or furtherance of a felony other than a violation of RCW 9.41.190, to discharge a machine gun or to menace or threaten with a machine gun, another person. A violation of this section shall be punished as a class A felony under chapter 9A.20 RCW. [1989 c 231 § 3.]

Intent—1989 c 231: "The legislature is concerned about the increasing number of drug dealers, gang members, and other dangerous criminals who are increasingly being found in possession of machine guns. The legislature recognizes that possession of machine guns by dangerous criminals represents a serious threat to law enforcement officers and the general public. The use of a machine gun in furtherance of a felony is a particularly heinous crime because of the potential for great harm or death to a large number of people. It is the intent of the legislature to protect the public safety by deterring the illegal use of machine guns in the furtherance of a felony by creating a separate offense with severe penalties for such use of a machine gun." [1989 c 231 § 1.]

9.41.230 Aiming or discharging firearms, dangerous weapons. (1) For conduct not amounting to a violation of chapter 9A.36 RCW, any person who:

(a) Aims any firearm, whether loaded or not, at or towards any human being;

(b) Willfully discharges any firearm, air gun, or other weapon, or throws any deadly missile in a public place, or in any place where any person might be endangered thereby. A public place shall not include any location at which firearms are authorized to be lawfully discharged; or

(c) Except as provided in RCW 9.41.185, sets a so-called trap, spring pistol, rifle, or other dangerous weapon, although no injury results, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) If an injury results from a violation of subsection (1) of this section, the person violating subsection (1) of this section shall be subject to the applicable provisions of chapters 9A.32 and 9A.36 RCW. [1994 sp.s. c 7 § 422; 1909 c 249 § 307; 1888 p 100 §§ 2, 3; RRS § 2559.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Discharging firearm at railroad rolling stock: RCW 81.60.070.

Additional notes found at www.leg.wa.gov

9.41.240 Possession of pistol by person from eighteen to twenty-one. Unless an exception under RCW 9.41.042, 9.41.050, or 9.41.060 applies, a person at least eighteen years of age, but less than twenty-one years of age, may possess a pistol only:

(1) In the person's place of abode;

(2) At the person's fixed place of business; or

(3) On real property under his or her control. [1994 sp.s. c 7 § 423; 1971 c 34 § 1; 1909 c 249 § 308; 1883 p 67 § 1; RRS § 2560.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.250 Dangerous weapons—Penalty. (1) Every person who:

(a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife;

(b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

(c) Uses any contrivance or device for suppressing the noise of any firearm unless the suppressor is legally registered and possessed in accordance with federal law, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) "Spring blade knife" means any knife, including a prototype, model, or other sample, with a blade that is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement. A knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires physical exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife is not a spring blade knife. [2012 c 179 § 1; 2011 c 13 § 1; 2007 c 379 § 1; 1994 sp.s. c 7 § 424; 1959 c 143 § 1; 1957 c 93 § 1; 1909 c 249 § 265; 1886 p 81 § 1; Code 1881 § 929; RRS § 2517.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.251 Dangerous weapons—Application of restrictions to law enforcement, firefighting, rescue, and military personnel. (1) RCW 9.41.250 does not apply to:

(a) The possession or use of a spring blade knife by a general authority law enforcement officer, firefighter or rescue member, Washington state patrol officer, or military member, while the officer or member:

(i) Is on official duty; or

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

(iii) Is storing a spring blade knife;

(b) The manufacture, sale, transportation, transfer, distribution, or possession of spring blade knives pursuant to contract with a general authority law enforcement agency, fire or rescue agency, Washington state patrol, or military service, or pursuant to a contract with another manufacturer or a commercial distributor of knives for use, sale, or other disposition by the manufacturer or commercial distributor;

(c) The manufacture, transportation, transfer, distribution, or possession of spring blade knives, with or without compensation and with or without a contract, solely for trial, test, or other provisional use for evaluation and assessment purposes, by a general authority law enforcement agency, fire or rescue agency, Washington state patrol, military service, or a manufacturer or commercial distributor of knives.

(2) For the purposes of this section:

(a) "Military member" means an active member of the United States military or naval forces, or a Washington national guard member called to active duty or during training.

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(b) "General law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state or any other state, and any agency, department, or division of any state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general.

(c) "General law enforcement officer" means any person who is commissioned and employed by an employer on a full-time, fully compensated basis to enforce the criminal laws of the state of Washington generally. No person who is serving in a position that is basically clerical or secretarial in nature, or who is not commissioned shall be considered a law enforcement officer.

(d) "Fire or rescue agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state or any other state, and any agency, department, or division of any state government, having as its primary function the prevention, control, or extinguishment of fire or provision of emergency medical services or rescue actions for persons.

(e) "Firefighter or rescue member" means any person who is serving on a full-time, fully compensated basis as a member of a fire or rescue agency to prevent, control, or extinguish fire or provide emergency medical services or rescue actions for persons. No person who is serving in a position that is basically clerical or secretarial in nature shall be considered a firefighter or rescue member.

(f) "Military service" means the active, reserve, or national guard components of the United States military, including the army, navy, air force, marines, and coast guard. [2012 c 179 § 2.]

9.41.260 Dangerous exhibitions. Every proprietor, lessee, or occupant of any place of amusement, or any plat of ground or building, who allows it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow gun or firearm of any description, at or toward any human being, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1994 sp.s. c 7 § 425; 1909 c 249 § 283; RRS § 2535.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Fireworks: Chapter 70.77 RCW.

Additional notes found at www.leg.wa.gov

9.41.270 Weapons apparently capable of producing bodily harm—Unlawful carrying or handling—Penalty—Exceptions. (1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the depart-

ment of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments. [1994 sp.s. c 7 § 426; 1969 c 8 § 1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.280 Possessing dangerous weapons on school facilities—Penalty—Exceptions. (1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm;

(b) Any other dangerous weapon as defined in RCW 9.41.250;

(c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means;

(d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect;

(e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas; or

(f)(i) Any portable device manufactured to function as a weapon and which is commonly known as a stun gun, including a projectile stun gun which projects wired probes that are attached to the device that emit an electrical charge designed to administer to a person or an animal an electric shock, charge, or impulse; or

(ii) Any device, object, or instrument which is used or intended to be used as a weapon with the intent to injure a person by an electric shock, charge, or impulse.

(2) Any such person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall have his or her concealed pistol license, if any revoked for a period of three years. Anyone convicted under this subsection is prohibited from applying for a concealed pistol license for a period of three years. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section, the person shall be detained or confined in a juvenile or adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the designated mental health professional unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail.

Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the designated mental health professional for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The designated mental health professional shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

The designated mental health professional may determine whether to refer the person to the county-designated chemical dependency specialist for examination and evaluation in accordance with chapter 70.96A RCW. The county-designated chemical dependency specialist shall examine the person subject to the provisions of chapter 70.96A RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

Upon completion of any examination by the designated mental health professional or the county-designated chemical dependency specialist, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person.

The designated mental health professional and county-designated chemical dependency specialist shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined.

If the designated mental health professional determines it is appropriate, the designated mental health professional may refer the person to the local regional support network for follow-up services or the department of social and health services or other community providers for other services to the family and individual.

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

(a) Any student or employee of a private military academy when on the property of the academy;

(b) Any person engaged in military, law enforcement, or school district security activities. However, a person who is not a commissioned law enforcement officer and who provides school security services under the direction of a school administrator may not possess a device listed in subsection (1)(f) of this section unless he or she has successfully completed training in the use of such devices that is equivalent to the training received by commissioned law enforcement officers;

(c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;

(d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1)(c) and (d) of this section do not apply to any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises.

(5) Subsection (1)(f)(i) of this section does not apply to any person who possesses a device listed in subsection (1)(f)(i) of this section, if the device is possessed and used solely for the purpose approved by a school for use in a school authorized event, lecture, or activity conducted on the school premises.

(6) Except as provided in subsection (3)(b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(7) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds. [2009 c 453 § 1; 1999 c 167 § 1; 1996 c 295 § 13; 1995 c 87 § 1; 1994 sp.s. c 7 § 427; 1993 c 347 § 1; 1989 c 219 § 1; 1982 1st ex.s. c 47 § 4.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.290 State preemption. The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically

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authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality. [1994 sp.s. c 7 § 428; 1985 c 428 § 1; 1983 c 232 § 12.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.300 Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty. (1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW 70.74.010, or any weapon of the kind usually known as slung shot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health ser-

vices for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public;

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted

at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

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

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a), (b), (c), and (e) of this section does not apply to correctional personnel or community corrections officers, as long as they are employed as such, who have completed government-sponsored law enforcement firearms training, except that subsection (1)(b) of this section does apply to a correctional employee or community corrections officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010.

(8) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

(9) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

(10) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

(11) Government-sponsored law enforcement firearms training must be training that correctional personnel and community corrections officers receive as part of their job requirement and reference to such training does not constitute a mandate that it be provided by the correctional facility.

(12) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

(13) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250. [2011 c 221 § 2; 2008 c 33 § 1. Prior: 2004 c 116 § 1; 2004 c 16 § 1; 1994 sp.s. c 7 § 429; 1993 c 396 § 1; 1985 c 428 § 2.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.310 Information pamphlet. After a public hearing, the department of fish and wildlife shall publish a pamphlet on firearms safety and the legal limits of the use of firearms. The pamphlet shall include current information on fire-

arms laws and regulations and state preemption of local firearms laws. This pamphlet may be used in the department's hunter safety education program and shall be provided to the department of licensing for distribution to firearms dealers and persons authorized to issue concealed pistol licenses. The department of fish and wildlife shall reimburse the department of licensing for costs associated with distribution of the pamphlet. [1994 c 264 § 2; 1988 c 36 § 4; 1985 c 428 § 5.]

Additional notes found at www.leg.wa.gov

9.41.320 Fireworks. Nothing in this chapter shall prohibit the possession, sale, or use of fireworks when possessed, sold, or used in compliance with chapter 70.77 RCW. [1994 c 133 § 16.]

Additional notes found at www.leg.wa.gov

9.41.800 Surrender of weapons or licenses—Prohibition on future possession or licensing. (1) Any court when entering an order authorized under RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) Any court when entering an order authorized under RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a pistol under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(4) In addition to the provisions of subsections (1), (2), and (3) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this

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section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(5) The requirements of subsections (1), (2), and (4) of this section may be for a period of time less than the duration of the order.

(6) The court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding, the chief of police of the municipality having jurisdiction, or to the restrained or enjoined party's counsel or to any person designated by the court. [2002 c 302 § 704; 1996 c 295 § 14; 1994 sp.s. c 7 § 430.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.810 Penalty. Any violation of any provision of this chapter, except as otherwise provided, shall be a misdemeanor and punishable accordingly. [1984 c 258 § 312; 1983 c 232 § 11; 1983 c 3 § 7; 1961 c 124 § 12; 1935 c 172 § 16; RRS § 2516-16. Formerly RCW 9.41.160.]

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

Chapter 9.44 RCW PETITION MISCONDUCT

Sections

9.44.080 Misconduct in signing a petition.

9.44.080 Misconduct in signing a petition. In a situation not covered by RCW 29A.84.220, 29A.84.230, 29A.84.240, or 29A.84.250, every person who shall willfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his or her own name to or withdraw his or her name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his or her name to such petition shall willfully subscribe to any false statement concerning his or her age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor. [2011 c 336 § 297; 1999 c 143 § 4; 1909 c 249 § 337; RRS § 2589.]

Forgery: RCW 9A.60.020.

Initiative and referendum petition forgery: RCW 29A.84.230, 29A.84.250.

Recall petition forgery: RCW 29A.84.240, 29A.84.220.

Chapter 9.45 RCW FRAUDS AND SWINDLES

Sections

9.45.020 Substitution of child.

- 9.45.060 Encumbered, leased, or rented personal property—Construction.
- 9.45.070 Mock auctions.
- 9.45.080 Fraudulent removal of property.
- 9.45.090 Knowingly receiving fraudulent conveyance.
- 9.45.100 Fraud in assignment for benefit of creditors.
- 9.45.122 Measurement of commodities—Public policy.
- 9.45.124 Measurement of commodities—Measuring inaccurately—Altering measuring devices—Penalty.
- 9.45.126 Measurement of commodities—Inducing violations—Penalty.
- 9.45.160 Fraud in liquor warehouse receipts.
- 9.45.170 Penalty.
- 9.45.210 Altering sample or certificate of assay.
- 9.45.220 Making false sample or assay of ore.
- 9.45.260 Fire protection sprinkler system contractors—Wrongful acts.
- 9.45.270 Fraudulent filing of vehicle report of sale.

Bank or trust company

- falsification or destruction of records:* RCW 30.12.090, 30.12.100.
- preferential transfers:* RCW 30.44.110.
- receiving deposits when insolvent:* RCW 30.44.120.
- using name of unlawfully:* RCW 30.04.020.

"Bushing" by motor vehicle dealers: RCW 46.70.180(4).

Cemeteries, representing fund as perpetual: RCW 68.40.085.

Cigarette tax fraud: RCW 82.24.110.

Domestic insurers, illegal or corrupt practices: RCW 48.06.190, 48.07.060, 48.08.040.

Election fraud: Chapter 29A.84 RCW.

Employment agent, fraud: RCW 49.44.050.

Falsification of books of credit union: Chapter 31.12 RCW.

Fish and wildlife, false or misleading information: RCW 77.15.270.

Food, drugs, and cosmetics: RCW 69.04.040, 69.04.060, 69.04.070.

Fraud: Chapter 9A.60 RCW.

Fraud by engraver of public bonds: RCW 39.44.101.

Fraudulent conveyances: Chapter 19.40 RCW.

Insurance

- agent, etc., appropriating funds, etc.:* RCW 48.17.480.
- fraud and unfair practices:* Chapter 48.30 RCW.
- Insured property, fraudulent injury or destruction:* RCW 48.30.220.
- Intent to defraud:* RCW 10.58.040.
- Land registration fraud:* RCW 65.12.750.

Motor vehicle

- certificates of title, falsifying:* RCW 46.12.750.
- dealers:* RCW 46.70.180.
- fuel tax fraud:* RCW 82.36.330, 82.36.380 through 82.36.400.

Mutual savings banks

- falsification of books, etc.:* RCW 32.04.100.
- transfers due to insolvency:* RCW 32.24.080.
- Obtaining employment by false recommendation:* RCW 49.44.040.
- Ownership of property, proof of:* RCW 10.58.060.
- Public assistance fraud:* RCW 74.08.055, 74.08.331.

Savings and loan associations

- falsification of books, etc.:* RCW 33.36.040.
- illegal loans and purchasing at discount by employees:* RCW 33.36.010, 33.36.020.
- preferential transfers of property:* RCW 33.36.030.
- Sporting contest fraud:* RCW 67.24.010.

State employees' retirement, falsification of statements, etc.: RCW 41.40.055.

State patrol retirement fund, falsifications: RCW 43.43.320.

Tax assessed property, removal to avoid payment: RCW 84.56.120, 84.56.200.

Teachers' retirement, falsification of statements, etc.: RCW 41.32.055.

Wages, rebating, etc., by employers: RCW 49.52.050, 49.52.090.

Warehouse operator or common carrier issuing false documents: Chapter 22.32 RCW.

9.45.020 Substitution of child. Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 29; 1992 c 7 § 9; 1909 c 249 § 123; RRS § 2375.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.060 Encumbered, leased, or rented personal property—Construction. Every person being in possession thereof, who shall sell, remove, conceal, convert to his or her own use, or destroy or connive at or consent to the sale, removal, conversion, concealment, or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease or rentor under such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [2011 c 336 § 298; 1971 c 61 § 1; 1965 ex.s. c 109 § 1; 1909 c 249 § 377; RRS § 2629.]

Destruction or removal of fixtures, etc., from mortgaged real property: RCW 61.12.030.

Larceny, sale of mortgaged property: Chapter 9A.56 RCW.

9.45.070 Mock auctions. Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in a state correctional facility for not more than five years or in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor. [2011 c 96 § 6; 1992 c 7 § 10; 1909 c 249 § 378; RRS § 2630.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Auctioneering without license: RCW 36.71.070.

Auctioneers: Chapter 18.11 RCW.

9.45.080 Fraudulent removal of property. Every person who, with intent to defraud a prior or subsequent pur-

chaser thereof, or prevent any of his or her property being made liable for the payment of any of his or her debts, or levied upon by an execution or warrant of attachment, shall remove any of his or her property, or secrete, assign, convey, or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey, or otherwise dispose of any of his or her books or accounts, vouchers or writings in any way relating to his or her business affairs, or destroy, obliterate, alter, or erase any of such books of account, accounts, vouchers, or writing or any entry, memorandum, or minute therein contained, shall be guilty of a gross misdemeanor. [2011 c 336 § 299; 1909 c 249 § 379; RRS § 2631.]

9.45.090 Knowingly receiving fraudulent conveyance. Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him or her in violation of, or with the intent to violate RCW 9.45.080, shall be guilty of a misdemeanor. [2011 c 336 § 300; 1909 c 249 § 380; RRS § 2632.]

9.45.100 Fraud in assignment for benefit of creditors. Every person who, having made, or being about to make, a general assignment of his or her property to pay his or her debts, shall by color or aid of any false or fraudulent representation, pretense, token, or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his or her claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor. [2011 c 336 § 301; 1909 c 249 § 381; RRS § 2633.]

Assignment for benefit of creditors: Chapter 7.08 RCW.

Banks and trust companies, preferential transfers: RCW 30.44.110.

Mutual savings banks, transfer of assets due to insolvency: RCW 32.24.080.

9.45.122 Measurement of commodities—Public policy. Because of the widespread importance to the marketing of goods, raw materials, and agricultural products such as, but not limited to, grains, timber, logs, wood chips, scrap metal, oil, gas, petroleum products, coal, fish and other commodities, that qualitative and quantitative measurements of such goods, materials and products be accurately and honestly made, it is declared to be the public policy of this state that certain conduct with respect to said measurement be declared unlawful. [1967 c 200 § 1.]

Weights and measures: Chapter 19.94 RCW.

Additional notes found at www.leg.wa.gov

9.45.124 Measurement of commodities—Measuring inaccurately—Altering measuring devices—Penalty. Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any promise thereof, on any agreement or understanding that he or she shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he or she has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate

measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 30; 1992 c 7 § 11; 1967 c 200 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.126 Measurement of commodities—Inducing violations—Penalty. Every person who shall give, offer or promise, or conspire to give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any person, corporation, independent contractor, or agent, employee or servant thereof with intent to violate RCW 9.45.124, is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 31; 1992 c 7 § 12; 1967 c 200 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.160 Fraud in liquor warehouse receipts. It shall be unlawful for any person, firm, association or corporation to make, utter, circulate, sell or offer for sale any certificate of any warehouse, distillery or depository for intoxicating liquors unless the identical liquor mentioned in such certificate is in the possession of the warehouse, distillery or depository mentioned in such certificate fully paid for, so that the owners and holder of such certificate will be entitled to obtain such intoxicating liquors without the payment of any additional sum except the tax of the government and the tax of the state, county and city in which such warehouse, distillery or depository may be located, and any storage charges. [1909 c 202 § 1. No RRS.]

9.45.170 Penalty. Any person violating any of the provisions of RCW 9.45.160, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than five years nor less than one year, or imprisonment in the county jail for any length of time not exceeding one year. [1909 c 202 § 2. No RRS.]

9.45.210 Altering sample or certificate of assay. Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment. [2003 c 53 § 32; 1890 p 99 § 2; RRS § 2712.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.220 Making false sample or assay of ore. Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment. [2003 c 53 § 33; 1890 p 99 § 3; RRS § 2713.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.260 Fire protection sprinkler system contractors—Wrongful acts. Any fire protection sprinkler system contractor, defined under RCW 18.160.010, who willfully and maliciously constructs, installs, or maintains a fire protection sprinkler system in any structure so as to threaten the safety of any occupant or user of the structure in the event of a fire, is guilty of a class C felony. This section may not be construed to create any criminal liability for a prime contractor or an owner of a structure unless it is proved that the prime contractor or owner had actual knowledge of an illegal construction, installation, or maintenance of a fire protection sprinkler system by a fire protection sprinkler system contractor. [1992 c 116 § 1.]

Fire protection sprinkler system contractors, licensing and regulation: Chapter 18.160 RCW.

9.45.270 Fraudulent filing of vehicle report of sale. Every person who files a vehicle report of sale without the knowledge of the transferee shall be guilty of fraudulent filing of vehicle report of sale and shall be punished as follows:

(1) Where the victim incurred damages in an amount less than two hundred fifty dollars, the defendant is guilty of a gross misdemeanor.

(2) Where the victim incurred damages in an amount exceeding two hundred fifty dollars, the defendant is guilty of a class C felony.

(3) Where the victim incurred damages in an amount exceeding one thousand five hundred dollars, the defendant is guilty of a class B felony. [2006 c 291 § 1.]

Chapter 9.46 RCW GAMBLING—1973 ACT

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- 9.46.310 Licenses for manufacture, sale, distribution, or supply of gambling devices.
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- 9.46.900 Severability—1973 1st ex.s. c 218.
- 9.46.901 Intent—1987 c 4.
- 9.46.902 Construction—1987 c 4.
- 9.46.903 Intent—1994 c 218.

State lottery commission—Sale of tickets or shares—Other law inapplicable: RCW 67.70.210.

9.46.010 Legislative declaration. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punchboards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be consid-

ered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

The legislature further declares that raffles authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder, with the exception of this section and RCW 9.46.400.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end. [1996 c 101 § 2; 1994 c 218 § 2; 1975 1st ex.s. c 259 § 1; 1974 ex.s. c 155 § 1; 1974 ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

Findings—1996 c 101: See note following RCW 77.32.530.

Additional notes found at www.leg.wa.gov

9.46.0201 "Amusement game." "Amusement game," as used in this chapter, means a game played for entertainment in which:

- (1) The contestant actively participates;
- (2) The outcome depends in a material degree upon the skill of the contestant;
- (3) Only merchandise prizes are awarded;
- (4) The outcome is not in the control of the operator;
- (5) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and
- (6) Said game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended.

Cake walks as commonly known and fish ponds as commonly known shall be treated as amusement games for all purposes under this chapter. [1987 c 4 § 2. Formerly RCW 9.46.020(1), part.]

9.46.0205 "Bingo." "Bingo," as used in this chapter, means a game conducted only in the county within which the organization is principally located in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which no cards are sold except at the time and place of said game, when said game is conducted by a bona fide charitable or nonprofit organization, or if an agricultural fair authorized under chapters 15.76 and 36.37 RCW, which does not conduct bingo on more than twelve consecutive days in any calendar year, and except in the case of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a bona fide member or an employee of said organization takes any part in the management or operation of said game, and no person who takes any part in the management or operation of said game takes any part in the management or operation of any game conducted by any other organization or any other branch of the same organization, unless approved by the commission, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game. For the purposes of this section, the organization shall be deemed to be principally located in the county within which it has its primary business

office. If the organization has no business office, the organization shall be deemed to be located in the county of principal residence of its chief executive officer: PROVIDED, That any organization which is conducting any licensed and established bingo game in any locale as of January 1, 1981, shall be exempt from the requirement that such game be conducted in the county in which the organization is principally located. [2002 c 369 § 1; 1987 c 4 § 3. Formerly RCW 9.46.020(2).]

9.46.0209 "Bona fide charitable or nonprofit organization." (1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required;

(ii) Have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the policies of the organization in order to receive a gambling license; and

(iii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under

this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization also includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities. [2009 c 137 § 1; 2007 c 452 § 1; 2000 c 233 § 1; 1987 c 4 § 4. Formerly RCW 9.46.020(3).]

9.46.0213 "Bookmaking." "Bookmaking," as used in this chapter, means accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or "vigorish" for the opportunity to place a bet. [1991 c 261 § 1; 1987 c 4 § 5. Formerly RCW 9.46.020(4).]

9.46.0217 "Commercial stimulant." "Commercial stimulant," as used in this chapter, means an activity is operated as a commercial stimulant, for the purposes of this chapter, only when it is an activity operated in connection with an established business, with the purpose of increasing the volume of sales of food or drink for consumption on that business premises. The commission may by rule establish guidelines and criteria for applying this definition to its applicants and licensees for gambling activities authorized by this chapter as commercial stimulants. [1994 c 120 § 1; 1987 c 4 § 6. Formerly RCW 9.46.020(5).]

9.46.0221 "Commission." "Commission," as used in this chapter, means the Washington state gambling commis-

sion created in RCW 9.46.040. [1987 c 4 § 7. Formerly RCW 9.46.020(6).]

9.46.0225 "Contest of chance." "Contest of chance," as used in this chapter, means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. [1987 c 4 § 8. Formerly RCW 9.46.020(7).]

9.46.0229 "Fishing derby." "Fishing derby," as used in this chapter, means a fishing contest, with or without the payment or giving of an entry fee or other consideration by some or all of the contestants, wherein prizes are awarded for the species, size, weight, or quality of fish caught in a bona fide fishing or recreational event. [1987 c 4 § 9. Formerly RCW 9.46.020(8).]

9.46.0233 "Fund-raising event." (1) "Fund-raising event," as used in this chapter, means a fund-raising event conducted during any seventy-two consecutive hours but exceeding twenty-four consecutive hours and not more than once in any calendar year or a fund-raising event conducted not more than twice each calendar year for not more than twenty-four consecutive hours each time by a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209 other than any agricultural fair referred to thereunder, upon authorization therefor by the commission, which the legislature hereby authorizes to issue a license therefor, with or without fee, permitting the following activities, or any of them, during such event: Bingo, amusement games, contests of chance, lotteries, and raffles. However: (a) Gross wagers and bets or revenue generated from participants under subsection (2) of this section received by the organization less the amount of money paid by the organization as winnings, or as payment for services or equipment rental under subsection (2) of this section, and for the purchase cost of prizes given as winnings do not exceed ten thousand dollars during the total calendar days of such fund-raising event in the calendar year; (b) such activities shall not include any mechanical gambling or lottery device activated by the insertion of a coin or by the insertion of any object purchased by any person taking a chance by gambling in respect to the device; (c) only bona fide members of the organization who are not paid for such service or persons licensed or approved by the commission under subsection (2) of this section shall participate in the management or operation of the activities, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization; and (d) such organization shall notify the appropriate local law enforcement agency of the time and place where such activities shall be conducted. The commission shall require an annual information report setting forth in detail the expenses incurred and the revenue received relative to the activities permitted.

(2) Bona fide charitable or nonprofit organizations may hire a person or vendor, who is licensed or approved by the commission, to organize and conduct a fund-raising event on behalf of the sponsoring organization subject to the following restrictions:

(a) The person or vendor may not provide the facility for the event;

(b) The person or vendor may use paid personnel and may be compensated by a fixed fee determined prior to the event, but may not share in the proceeds of the event;

(c) All wagers must be made with scrip or chips having no cash value. At the end of the event, participants may be given the opportunity to purchase or otherwise redeem their scrip or chips for merchandise prizes;

(d) The value of all purchased prizes must not exceed ten percent of the gross revenue from the event; and

(e) Only members and guests of the sponsoring organization may participate in the event.

(3) Bona fide charitable or nonprofit organizations holding a license to conduct a fund-raising event may join together to jointly conduct a fund-raising event if:

(a) Approval to do so is received from the commission; and

(b) The method of dividing the income and expenditures and the method of recording and handling of funds are disclosed to the commission in the application for approval of the joint fund-raising event and are approved by the commission.

The gross wagers and bets or revenue generated from participants under subsection (2) of this section received by the organizations less the amount of money paid by the organizations as winnings, or as payment for services or equipment rental under subsection (2) of this section, and for the purchase costs of prizes given as winnings may not exceed ten thousand dollars during the total calendar days of such event. The net receipts each organization receives shall count against the organization's annual limit stated in this subsection.

A joint fund-raising event shall count against only the lead organization or organizations receiving fifty percent or more of the net receipts for the purposes of the number of such events an organization may conduct each year.

The commission may issue a joint license for a joint fund-raising event and charge a license fee for such license according to a schedule of fees adopted by the commission which reflects the added cost to the commission of licensing more than one licensee for the event. [2000 c 178 § 1; 1987 c 4 § 24. Formerly RCW 9.46.020(23).]

9.46.0237 "Gambling." "Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting and handicapping contests as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition

of lottery under this chapter shall not constitute gambling. [2005 c 351 § 1; 1987 c 4 § 10. Formerly RCW 9.46.020(9).]

9.46.0241 "Gambling device." "Gambling device," as used in this chapter, means: (1) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance, including, but not limited to slot machines, video pull-tabs, video poker, and other electronic games of chance; (2) any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; (3) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (4) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. In the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device: PROVIDED, That owning, possessing, buying, selling, renting, leasing, financing, holding a security interest in, storing, repairing and transporting such pinball machines or similar mechanical amusement devices shall not be deemed engaging in professional gambling for the purposes of this chapter and shall not be a violation of this chapter: PROVIDED FURTHER, That any fee for the purchase or rental of any such pinball machines or similar amusement devices shall have no relation to the use to which such machines are put but be based only upon the market value of any such machine, regardless of the location of or type of premises where used, and any fee for the storing, repairing and transporting thereof shall have no relation to the use to which such machines are put, but be commensurate with the cost of labor and other expenses incurred in any such storing, repairing and transporting. [1994 c 218 § 8; 1987 c 4 § 11. Formerly RCW 9.46.020(10).]

Additional notes found at www.leg.wa.gov

9.46.0245 "Gambling information." "Gambling information," as used in this chapter, means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling. This section shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission. [1987 c 4 § 12. Formerly RCW 9.46.020(11).]

9.46.0249 "Gambling premises." "Gambling premises," as used in this chapter, means any building, room,

enclosure, vehicle, vessel or other place used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling. [1987 c 4 § 13. Formerly RCW 9.46.020(12).]

9.46.0253 "Gambling record." "Gambling record," as used in this chapter, means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling. [1987 c 4 § 14. Formerly RCW 9.46.020(13).]

9.46.0257 "Lottery." "Lottery," as used in this chapter, means a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance. [1987 c 4 § 15. Formerly RCW 9.46.020(14).]

9.46.0261 "Member," "bona fide member." "Member" and "bona fide member," as used in this chapter, mean a person accepted for membership in an organization eligible to be licensed by the commission under this chapter upon application, with such action being recorded in the official minutes of a regular meeting or who has held full and regular membership status in the organization for a period of not less than twelve consecutive months prior to participating in the management or operation of any gambling activity. Such membership must in no way be dependent upon, or in any way related to, the payment of consideration to participate in any gambling activity.

Member or bona fide member shall include only members of an organization's specific chapter or unit licensed by the commission or otherwise actively conducting the gambling activity: PROVIDED, That:

(1) Members of chapters or local units of a state, regional or national organization may be considered members of the parent organization for the purpose of a gambling activity conducted by the parent organization, if the rules of the parent organization so permit;

(2) Members of a bona fide auxiliary to a principal organization may be considered members of the principal organization for the purpose of a gambling activity conducted by the principal organization. Members of the principal organization may also be considered members of its auxiliary for the purpose of a gambling activity conducted by the auxiliary; and

(3) Members of any chapter or local unit within the jurisdiction of the next higher level of the parent organization, and members of a bona fide auxiliary to that chapter or unit, may assist any other chapter or local unit of that same organization licensed by the commission in the conduct of gambling activities.

No person shall be a member of any organization if that person's primary purpose for membership is to become, or continue to be, a participant in, or an operator or manager of, any gambling activity or activities. [1987 c 4 § 16. Formerly RCW 9.46.020(15).]

9.46.0265 "Player." "Player," as used in this chapter, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any

form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants shall not be considered as rendering material assistance to the establishment, conduct or operation of the social game merely by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises for the game, or supplying cards or other equipment to be used in the games. A person who engages in "bookmaking" as defined in this chapter is not a "player." A person who pays a fee or "vigorish" enabling him or her to place a wager with a bookmaker, or pays a fee other than as authorized by this chapter to participate in a card game, contest of chance, lottery, or gambling activity, is not a player. [1997 c 118 § 2; 1991 c 261 § 2; 1987 c 4 § 17. Formerly RCW 9.46.020(16).]

9.46.0269 "Professional gambling." (1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any form of gambling activity; or

(b) Acting other than in a manner authorized by this chapter, the person pays a fee to participate in a card game, contest of chance, lottery, or other gambling activity; or

(c) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity; or

(d) The person engages in bookmaking; or

(e) The person conducts a lottery; or

(f) The person violates RCW 9.46.039.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified

position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED FURTHER, That the books and records of the games shall be open to public inspection. [1997 c 78 § 1; 1996 c 252 § 2; 1987 c 4 § 18. Formerly RCW 9.46.020(17).]

9.46.0273 "Punchboards," "pull-tabs." "Punchboards" and "pull-tabs," as used in this chapter, shall be given their usual and ordinary meaning as of July 16, 1973, except that such definition may be revised by the commission pursuant to rules and regulations promulgated pursuant to this chapter. [1987 c 4 § 19. Formerly RCW 9.46.020(18).]

9.46.0277 "Raffle." "Raffle," as used in this chapter, means a game in which tickets bearing an individual number are sold for not more than one hundred dollars each and in which a prize or prizes are awarded on the basis of a drawing from the tickets by the person or persons conducting the game, when the game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of the organization takes any part in the management or operation of the game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting the game. [2009 c 133 § 1; 1995 2nd sp.s. c 4 § 1; 1987 c 4 § 20. Formerly RCW 9.46.020(19).]

9.46.0282 "Social card game." "Social card game" as used in this chapter means a card game that constitutes gambling and is authorized by the commission under RCW 9.46.070. Authorized card games may include a house-banked or a player-funded banked card game. No one may participate in the card game or have an interest in the proceeds of the card game who is not a player or a person licensed by the commission to participate in social card games. There shall be two or more participants in the card game who are players or persons licensed by the commission. The card game must be played in accordance with the rules adopted by the commission under RCW 9.46.070, which shall include but not be limited to rules for the collection of fees, limitation of wagers, and management of player funds. The number of tables authorized shall be set by the commission but shall not exceed a total of fifteen separate tables per establishment. [1997 c 118 § 1.]

9.46.0285 "Thing of value." "Thing of value," as used in this chapter, means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [1987 c 4 § 22. Formerly RCW 9.46.020(21).]

9.46.0289 "Whoever," "person." "Whoever" and "person," as used in this chapter, include natural persons, corporations and partnerships and associations of persons; and when any corporate officer, director or stockholder or any partner authorizes, participates in, or knowingly accepts ben-

efits from any violation of this chapter committed by his or her corporation or partnership, he or she shall be punishable for such violation as if it had been directly committed by him or her. [1987 c 4 § 23. Formerly RCW 9.46.020(22).]

9.46.0305 Dice or coin contests for music, food, or beverage payment. The legislature hereby authorizes the wagering on the outcome of the roll of dice or the flipping of or matching of coins on the premises of an establishment engaged in the business of selling food or beverages for consumption on the premises to determine which of the participants will pay for coin-operated music on the premises or certain items of food or beverages served or sold by such establishment and therein consumed. Such establishments are hereby authorized to possess dice and dice cups on their premises, but only for use in such limited wagering. Persons engaged in such limited form of wagering shall not be subject to the criminal or civil penalties otherwise provided for in this chapter. [2009 c 357 § 1; 1987 c 4 § 25. Formerly RCW 9.46.020(1), part.]

Minors barred from gambling activities: RCW 9.46.228.

9.46.0311 Charitable, nonprofit organizations—Authorized gambling activities. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct bingo games, raffles, amusement games, and fundraising events, and to utilize punchboards and pull-tabs and to allow their premises and facilities to be used by only members, their guests, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, to play social card games authorized by the commission, when licensed, conducted or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 26. Formerly RCW 9.46.030(1).]

9.46.0315 Raffles—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of raffles, are hereby authorized to conduct raffles without obtaining a license to do so from the commission when such raffles are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission; when gross revenues from all such raffles held by the organization during the calendar year do not exceed five thousand dollars; and when tickets to such raffles are sold only to, and winners are determined only from among, the regular members of the organization conducting the raffle. The organization may provide unopened containers of beverages containing alcohol as raffle prizes if the appropriate permit has been obtained from the liquor control board: PROVIDED, That raffles that exceed five thousand dollars may also be conducted pursuant to the provisions of this section if the organization obtains a license from the commission: PROVIDED FURTHER, That the term members for this purpose shall mean only those persons who have become members prior to the commencement of the raffle and whose qualification for membership was not dependent upon, or in any way related to, the purchase of a ticket, or tickets, for such raffles. [2012 c 131 § 1; 1991 c 192 § 4; 1987 c 4 § 27. Formerly RCW 9.46.030(2).]

9.46.0321 Bingo, raffles, amusement games—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of such activities are hereby authorized to conduct bingo, raffles, and amusement games, without obtaining a license to do so from the commission but only when:

(1) Such activities are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission;

(2) Said activities are, alone or in any combination, conducted no more than twice each calendar year and over a period of no more than twelve consecutive days each time, notwithstanding the limitations of RCW 9.46.0205: PROVIDED, That a raffle conducted under this subsection may be conducted for a period longer than twelve days;

(3) Only bona fide members of that organization, who are not paid for such services, participate in the management or operation of the activities;

(4) Gross revenues to the organization from all the activities together do not exceed five thousand dollars during any calendar year;

(5) All revenue therefrom, after deducting the cost of prizes and other expenses of the activity, is devoted solely to the purposes for which the organization qualifies as a bona fide charitable or nonprofit organization;

(6) The organization gives notice at least five days in advance of the conduct of any of the activities to the local police agency of the jurisdiction within which the activities are to be conducted of the organization's intent to conduct the activities, the location of the activities, and the date or dates they will be conducted; and

(7) The organization conducting the activities maintains records for a period of one year from the date of the event which accurately show at a minimum the gross revenue from each activity, details of the expenses of conducting the activities, and details of the uses to which the gross revenue therefrom is put. [1987 c 4 § 28. Formerly RCW 9.46.030(3).]

9.46.0325 Social card games, punchboards, pull-tabs authorized. The legislature hereby authorizes any person, association or organization operating an established business primarily engaged in the selling of food or drink for consumption on the premises to conduct social card games and to utilize punchboards and pull-tabs as a commercial stimulant to such business when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 29. Formerly RCW 9.46.030(4).]

9.46.0331 Amusement games authorized—Minimum rules. The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. The rules shall provide for at least the following:

(1) Persons other than bona fide charitable or bona fide nonprofit organizations shall conduct amusement games only after obtaining a special amusement game license from the commission.

(2) Amusement games may be conducted under such a license only as a part of, and upon the site of:

(a) Any agricultural fair as authorized under chapter 15.76 or 36.37 RCW; or

(b) A civic center of a county, city, or town; or

(c) A world's fair or similar exposition that is approved by the bureau of international expositions at Paris, France; or

(d) A community-wide civic festival held not more than once annually and sponsored or approved by the city, town, or county in which it is held; or

(e) A commercial exposition organized and sponsored by an organization or association representing the retail sales and service operators conducting business in a shopping center or other commercial area developed and operated for retail sales and service, but only upon a parking lot or similar area located in said shopping center or commercial area for a period of no more than seventeen consecutive days by any licensee during any calendar year; or

(f) An amusement park. An amusement park is a group of activities, at a permanent location, to which people go to be entertained through a combination of various mechanical or aquatic rides, theatrical productions, motion picture, and/or slide show presentations with food and drink service. The amusement park must include at least five different mechanical, or aquatic rides, three additional activities, and the gross receipts must be primarily from these amusement activities; or

(g) Within a regional shopping center. A regional shopping center is a shopping center developed and operated for retail sales and service by retail sales and service operators and consisting of more than six hundred thousand gross square feet not including parking areas. Amusement games conducted as a part of, and upon the site of, a regional shopping center shall not be subject to the prohibition on revenue sharing set forth in RCW 9.46.120(2); or

(h) A location that possesses a valid license from the Washington state liquor control board and prohibits minors on their premises; or

(i) Movie theaters, bowling alleys, miniature golf course facilities, and amusement centers. For the purposes of this section an amusement center shall be defined as a permanent location whose primary source of income is from the operation of ten or more amusement devices; or

(j) Any business whose primary activity is to provide food service for on premises consumption and who offers family entertainment which includes at least three of the following activities: Amusement devices; theatrical productions; mechanical rides; motion pictures; and slide show presentations; or

(k) Other locations as the commission may authorize.

(3) No amusement games may be conducted in any location except in conformance with local zoning, fire, health, and similar regulations. In no event may the licensee conduct any amusement games at any of the locations set out in subsection (2) of this section without first having obtained the written permission to do so from the person or organization owning the premises or an authorized agent thereof, and from the persons sponsoring the fair, exhibition, commercial exhibition, or festival, or from the city or town operating the civic center, in connection with which the games are to be operated.

(4) In no event may a licensee conduct any amusement games at the location described in subsection (2)(g) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from entry during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and providing for hours for the close of business at such location that are no later than 10:00 p.m. on Fridays and Saturdays and on all other days that are the same as those of the regional shopping center in which the licensee is located.

(5) In no event may a licensee conduct any amusement game at a location described in subsection (2)(i) or (j) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from playing licensed amusement games during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and prohibiting minors from playing the amusement games after 10:00 p.m. on any day. [2009 c 78 § 1; 1991 c 287 § 1; 1987 c 4 § 30. Formerly RCW 9.46.030(5).]

9.46.0335 Sports pools authorized. The legislature hereby authorizes any person, association, or organization to conduct sports pools without a license to do so from the commission but only when the outcome of which is dependent upon the score, or scores, of a certain athletic contest and which is conducted only in the following manner:

(1) A board or piece of paper is divided into one hundred equal squares, each of which constitutes a chance to win in the sports pool and each of which is offered directly to prospective contestants at one dollar or less;

(2) The purchaser of each chance or square signs his or her name on the face of each square or chance he or she purchases; and

(3) At some time not later than prior to the start of the subject athletic contest the pool is closed and no further chances in the pool are sold;

(4) After the pool is closed a prospective score is assigned by random drawing to each square;

(5) All money paid by entrants to enter the pool less taxes is paid out as the prize or prizes to those persons holding squares assigned the winning score or scores from the subject athletic contest;

(6) The sports pool board is available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand at all times prior to the payment of the prize;

(7) The person or organization conducting the pool is conducting no other sports pool on the same athletic event; and

(8) The sports pool conforms to any rules and regulations of the commission applicable thereto. [1987 c 4 § 31. Formerly RCW 9.46.030(6).]

9.46.0341 Golfing sweepstakes authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, golfing

sweepstakes permitting wagers of money, and the same shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties thereunder, but this only when the outcome of such golfing sweepstakes is dependent upon the score, or scores, or the playing ability, or abilities, of a golfing contest between individual players or teams of such players, conducted in the following manner:

(1) Wagers are placed by buying tickets on any players in a golfing contest to "win," "place," or "show" and those holding tickets on the three winners may receive a payoff similar to the system of betting identified as parimutuel, such moneys placed as wagers to be used primarily as winners' proceeds, except moneys used to defray the expenses of such golfing sweepstakes or otherwise used to carry out the purposes of such organization; or

(2) Participants in any golfing contest(s) pay a like sum of money into a common fund on the basis of attaining a stated number of points ascertainable from the score of such participants, and those participants attaining such stated number of points share equally in the moneys in the common fund, without any percentage of such moneys going to the sponsoring organization; or

(3) An auction is held in which persons may bid on the players or teams of players in the golfing contest, and the person placing the highest bid on the player or team that wins the golfing contest receives the proceeds of the auction, except moneys used to defray the expenses of the golfing sweepstakes or otherwise used to carry out the purposes of the organizations; and

(4) Participation is limited to members of the sponsoring organization and their bona fide guests. [1997 c 38 § 1; 1987 c 4 § 32. Formerly RCW 9.46.030(7).]

9.46.0345 Bowling sweepstakes authorized. The legislature hereby authorizes bowling establishments to conduct, without the necessity of obtaining a permit or license to do so, as a commercial stimulant, a bowling activity which permits bowlers to purchase tickets from the establishment for a predetermined and posted amount of money, which tickets are then selected by the luck of the draw and the holder of the matching ticket so drawn has an opportunity to bowl a strike and if successful receives a predetermined and posted monetary prize: PROVIDED, That all sums collected by the establishment from the sale of tickets shall be returned to purchasers of tickets and no part of the proceeds shall inure to any person other than the participants winning in the game or a recognized charity. The tickets shall be sold, and accounted for, separately from all other sales of the establishment. The price of any single ticket shall not exceed one dollar. Accounting records shall be available for inspection during business hours by any person purchasing a chance thereon, by the commission or its representatives, or by any law enforcement agency. [1987 c 4 § 33. Formerly RCW 9.46.030(8).]

9.46.0351 Social card, dice games—Use of premises of charitable, nonprofit organizations. (1) The legislature hereby authorizes any bona fide charitable or nonprofit organization which is licensed pursuant to RCW 66.24.400, and its officers and employees, to allow the use of the premises,

furnishings, and other facilities not gambling devices of such organization by members of the organization, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, who engage as players in the following types of gambling activities only:

(a) Social card games; and

(b) Social dice games, which shall be limited to contests of chance, the outcome of which are determined by one or more rolls of dice.

(2) Bona fide charitable or nonprofit organizations shall not be required to be licensed by the commission in order to allow use of their premises in accordance with this section. However, the following conditions must be met:

(a) No organization, corporation, or person shall collect or obtain or charge any percentage of or shall collect or obtain any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That a player may collect his or her winnings; and

(b) No organization, corporation, or person shall collect or obtain any money or thing of value from, or charge or impose any fee upon, any person which either enables him or her to play or results in or from his or her playing: PROVIDED, That this subsection shall not preclude collection of a membership fee which is unrelated to participation in gambling activities authorized under this section. [1999 c 143 § 5; 1987 c 4 § 34. Formerly RCW 9.46.030(9).]

9.46.0356 Promotional contests of chance authorized. (1) The legislature authorizes:

(a) A business to conduct a promotional contest of chance as defined in this section, in this state, or partially in this state, whereby the elements of prize and chance are present but in which the element of consideration is not present;

(b) A financial institution, as defined in RCW 30.22.040, to conduct a promotional contest of chance under this section in which: (i) A drawing for an annual prize is held that includes as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or any other savings program and retained those funds for at least twelve months in the savings account, certificate of deposit, or other savings program; and (ii) drawings for other prizes are held from time to time that include as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or other savings program. No such contest may be conducted, either wholly or partially, by means of the internet.

(2) Promotional contests of chance under this section are not gambling as defined in RCW 9.46.0237.

(3) Promotional contests of chance shall be conducted as advertising and promotional undertakings solely for the purpose of advertising or promoting the services, goods, wares, and merchandise of a business.

(4) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(a) of this section may be required to:

(a) Pay any consideration to the promoter or operator of the business in order to participate in the contest; or

(b) Purchase any service, goods, wares, merchandise, or anything of value from the business, however, for other than

contests entered through a direct mail solicitation, the promoter or sponsor may give additional entries or chances upon purchase of service, goods, wares, or merchandise if the promoter or sponsor provides an alternate method of entry requiring no consideration.

(5) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(b) of this section may be required to pay any consideration other than the deposit of funds, or purchase any service, goods, wares, merchandise, or anything of value from the financial institution.

(6)(a) As used in this section, "consideration" means anything of pecuniary value required to be paid to the promoter or sponsor in order to participate in a promotional contest. Such things as visiting a business location, placing or answering a telephone call, completing an entry form or customer survey, or furnishing a stamped, self-addressed envelope do not constitute consideration.

(b) Coupons or entry blanks obtained by purchase of a bona fide newspaper or magazine or in a program sold in conjunction with a regularly scheduled sporting event are not consideration.

(7) Unless authorized by the commission, equipment or devices made for use in a gambling activity are prohibited from use in a promotional contest.

(8) This section shall not be construed to permit noncompliance with chapter 19.170 RCW, promotional advertising of prizes, and chapter 19.86 RCW, unfair business practices. [2011 c 303 § 2; 2000 c 228 § 1.]

Findings—Intent—2011 c 303: "The legislature finds that consumer savings is essential, both for individuals seeking to obtain the American dream, and in order to rebuild a strong economy. The legislature further finds that for most of the last two decades, consumers have borrowed more than they have saved, with current United States savings rates under six percent. The legislature intends to encourage financial institutions to develop innovative products that create incentives to encourage consumer savings, particularly savings by low-income consumers." [2011 c 303 § 1.]

9.46.0361 Turkey shoots authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, turkey shoots permitting wagers of money. Such contests shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties. Such organizations must be organized for purposes other than the conduct of turkey shoots.

Such turkey shoots shall be held in accordance with all other requirements of this chapter, other applicable laws, and rules that may be adopted by the commission. Gross revenues from all such turkey shoots held by the organization during the calendar year shall not exceed five thousand dollars. Turkey shoots conducted under this section shall meet the following requirements:

(1) The target shall be divided into one hundred or fewer equal sections, with each section constituting a chance to win. Each chance shall be offered directly to a prospective contestant for one dollar or less;

(2) The purchaser of each chance shall sign his or her name on the face of the section he or she purchases;

(3) The person shooting at the target shall not be a participant in the contest, but shall be a member of the organization conducting the contest;

(4) Participation in the contest shall be limited to members of the organization which is conducting the contest and their guests;

(5) The target shall contain the following information:

(a) Distance from the shooting position to the target;

(b) The gauge of the shotgun;

(c) The type of choke on the barrel;

(d) The size of shot that will be used; and

(e) The prize or prizes that are to be awarded in the contest;

(6) The targets, shotgun, and ammunition shall be available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand, at all times before the prizes are awarded;

(7) The turkey shoot shall award the prizes based upon the greatest number of shots striking a section;

(8) No turkey shoot may offer as a prize the right to advance or continue on to another turkey shoot or turkey shoot target; and

(9) Only bona fide members of the organization who are not paid for such service may participate in the management or operation of the turkey shoot, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization. [1987 c 4 § 36. Formerly RCW 9.46.030(12).]

9.46.039 Greyhound racing prohibited. (1) A person may not hold, conduct, or operate live greyhound racing for public exhibition, parimutuel betting, or special exhibition events, if such activities are conducted for gambling purposes. A person may not transmit or receive intrastate or interstate simulcasting of greyhound racing for commercial, parimutuel, or exhibition purposes, if such activities are conducted for gambling purposes.

(2) A person who violates this section is guilty of a class B felony, under RCW 9.46.220, professional gambling in the first degree, and is subject to the penalty under RCW 9A.20.021. [1996 c 252 § 1.]

9.46.040 Gambling commission—Members—Appointment—Vacancies, filling. There shall be a commission, known as the "Washington state gambling commission", consisting of five members appointed by the governor with the consent of the senate. The members of the commission shall be appointed within thirty days of July 16, 1973 for terms beginning July 1, 1973, and expiring as follows: One member of the commission for a term expiring July 1, 1975; one member of the commission for a term expiring July 1, 1976; one member of the commission for a term expiring July 1, 1977; one member of the commission for a term expiring July 1, 1978; and one member of the commission for a term expiring July 1, 1979; each as the governor so determines. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six year terms: PROVIDED, That no member of the commission who has served a full six year term shall be eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the commission shall impair the right of the remaining mem-

ber or members to act, except as in RCW 9.46.050(2) provided.

In addition to the members of the commission there shall be four ex officio members without vote from the legislature consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives; such appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first; members may be reappointed; vacancies shall be filled in the same manner as original appointments are made. Such ex officio members who shall collect data deemed essential to future legislative proposals and exchange information with the board shall be deemed engaged in legislative business while in attendance upon the business of the board and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the "gambling revolving fund" as being expenses relative to commission business. [1974 ex.s. c 155 § 12; 1974 ex.s. c 135 § 12; 1973 1st ex.s. c 218 § 4.]

Additional notes found at www.leg.wa.gov

9.46.050 Gambling commission—Chair—Quorum—Meetings—Compensation and travel expenses—Bond—Removal. (1) Upon appointment of the initial membership the commission shall meet at a time and place designated by the governor and proceed to organize, electing one of such members as chair of the commission who shall serve until July 1, 1974; thereafter a chair shall be elected annually.

(2) A majority of the members shall constitute a quorum of the commission: PROVIDED, That all actions of the commission relating to the regulation of licensing under this chapter shall require an affirmative vote by three or more members of the commission.

(3) The principal office of the commission shall be at the state capitol, and meetings shall be held at least quarterly and at such other times as may be called by the chair or upon written request to the chair of a majority of the commission.

(4) Members shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) Before entering upon the duties of his or her office, each of the members of the commission shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his or her duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the commission.

(6) Any member of the commission may be removed for inefficiency, malfeasance, or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall

thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final. Removal of any member of the commission by the tribunal shall disqualify such member for reappointment. [2011 c 336 § 302; 1984 c 287 § 9; 1975-'76 2nd ex.s. c 34 § 7; 1973 1st ex.s. c 218 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

9.46.060 Gambling commission—Counsel—Audits—Payment for. (1) The attorney general shall be general counsel for the state gambling commission and shall assign such assistants as may be necessary in carrying out the purposes and provisions of this chapter, which shall include instituting and prosecuting any actions and proceedings necessary thereto.

(2) The state auditor shall audit the books, records, and affairs of the commission annually. The commission shall pay to the state treasurer for the credit of the state auditor such funds as may be necessary to defray the costs of such audits. The commission may provide for additional audits by certified public accountants. All such audits shall be public records of the state.

The payment for legal services and audits as authorized in this section shall be paid upon authorization of the commission from moneys in the gambling revolving fund. [1973 1st ex.s. c 218 § 6.]

9.46.070 Gambling commission—Powers and duties. The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punchboards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punchboards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions

of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(2012 Ed.)

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission shall require fingerprinting and national criminal history background checks on any persons seeking licenses, certifications, or permits under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity. All national criminal history background checks shall be conducted using fingerprints submitted to the United States department of justice-federal bureau of investigation. The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks. In identifying these persons, the commission must take into consideration the nature, character, size, and scope of the gambling activities requested by the persons making such applications;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo. In establishing limitations pursuant to this subsection the commission shall take into account (a) the nature, character, and scope of the activities of the licensee; (b) the source of all other income of the licensee; and (c) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from non-profit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation, or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0282;

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16)(a) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

(b) In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter;

(20) To renew the license of every person who applies for renewal within six months after being honorably dis-

charged, removed, or released from active military service in the armed forces of the United States upon payment of the renewal fee applicable to the license period, if there is no cause for denial, suspension, or revocation of the license;

(21) To issue licenses under subsections (1) through (4) of this section that are valid for a period of up to eighteen months, if it chooses to do so, in order to transition to the use of the business licensing services program through the department of revenue; and

(22) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [2012 c 116 § 1; 2007 c 206 § 1; 2002 c 119 § 1; 1999 c 143 § 6; 1993 c 344 § 1; 1987 c 4 § 38; 1981 c 139 § 3. Prior: 1977 ex.s. c 326 § 3; 1977 ex.s. c 76 § 2; 1975-'76 2nd ex.s. c 87 § 4; 1975 1st ex.s. c 259 § 4; 1974 ex.s. c 155 § 4; 1974 ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

Enforcement—Commission as a law enforcement agency: RCW 9.46.210.

Additional notes found at www.leg.wa.gov

9.46.0701 Charitable or nonprofit organizations—Sharing facilities. The commission may allow existing licensees under RCW 9.46.070(1) to share facilities at one location. [2002 c 369 § 2.]

9.46.071 Information for pathological gamblers—Fee increases. (1) The legislature recognizes that some individuals in this state are problem or pathological gamblers. Because the state promotes and regulates gambling through the activities of the state lottery commission, the Washington horse racing commission, and the Washington state gambling commission, the state has the responsibility to continue to provide resources for the support of services for problem and pathological gamblers. Therefore, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission shall jointly develop informational signs concerning problem and pathological gambling which include a toll-free hot line number for problem and pathological gamblers. The signs shall be placed in the establishments of gambling licensees, horse racing licensees, and lottery retailers. In addition, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission may also contract with other qualified entities to provide public awareness, training, and other services to ensure the intent of this section is fulfilled.

(2)(a) During any period in which RCW 82.04.285(2) is in effect, the commission may not increase fees payable by licensees under its jurisdiction for the purpose of funding services for problem and pathological gambling. Any fee imposed or increased by the commission, for the purpose of funding these services, before July 1, 2005, shall have no force and effect after July 1, 2005.

(b) During any period in which RCW 82.04.285(2) is not in effect:

(i) The commission, the Washington state horse racing commission, and the state lottery commission may contract for services, in addition to those authorized in subsection (1) of this section, to assist in providing for treatment of problem and pathological gambling; and

(ii) The commission may increase fees payable by licensees [licensees] under its jurisdiction for the purpose of

funding the services authorized in this section for problem and pathological gamblers. [2005 c 369 § 9; 2003 c 75 § 1; 1994 c 218 § 6.]

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 43.20A.890.

Additional notes found at www.leg.wa.gov

9.46.072 Pathological gambling behavior—Warning.

An entity licensed under RCW 9.46.070(1) which conducts or allows its premises to be used for conducting bingo on more than three occasions per week shall include the following statement in any advertising or promotion of gambling activity conducted by the licensee:

"CAUTION: Participation in gambling activity may result in pathological gambling behavior causing emotional and financial harm. For help, call 1-800-547-6133."

For purposes of this section, "advertising" includes print media, point-of-sale advertising, electronic media, billboards, and radio advertising. [2002 c 369 § 3.]

9.46.075 Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable. The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

(3) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

(5) Denies the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or who fails promptly to produce for inspection or audit any book, record, document or item required by law or commission rule;

(6) Shall fail to display its license on the premises where the licensed activity is conducted at all times during the operation of the licensed activity;

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;

(8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(11) Is a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of this chapter or to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders.

For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license the gambling commission may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1981 c 139 § 4; 1975 1st ex.s. c 166 § 12.]

Additional notes found at www.leg.wa.gov

9.46.077 Gambling commission—Vacation of certain suspensions upon payment of monetary penalty. The commission, when suspending any license for a period of thirty days or less, may further provide in the order of suspension that such suspension shall be vacated upon payment to the commission of a monetary penalty in an amount then fixed by the commission. [1981 c 139 § 5.]

Additional notes found at www.leg.wa.gov

9.46.080 Gambling commission—Administrator—Staff—Rules and regulations—Service contracts. The commission shall employ a full time director, who shall be the administrator for the commission in carrying out its powers and duties and who shall issue rules and regulations adopted by the commission governing the activities authorized hereunder and shall supervise commission employees in carrying out the purposes and provisions of this chapter. In addition, the director shall employ a deputy director, not

more than three assistant directors, together with such investigators and enforcement officers and such staff as the commission determines is necessary to carry out the purposes and provisions of this chapter. The director, the deputy director, the assistant directors, and personnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 RCW, as now law or hereafter amended. Neither the director nor any commission employee working therefor shall be an officer or manager of any bona fide charitable or bona fide nonprofit organization, or of any organization which conducts gambling activity in this state.

The director, subject to the approval of the commission, is authorized to enter into agreements on behalf of the commission for mutual assistance and services, based upon actual costs, with any state or federal agency or with any city, town, or county, and such state or local agency is authorized to enter into such an agreement with the commission. If a needed service is not available from another agency of state government within a reasonable time, the director may obtain that service from private industry. [1994 c 218 § 14; 1981 c 139 § 6; 1977 ex.s. c 326 § 4; 1974 ex.s. c 155 § 7; 1974 ex.s. c 135 § 7; 1973 1st ex.s. c 218 § 8.]

Additional notes found at www.leg.wa.gov

9.46.085 Gambling commission—Members and employees—Activities prohibited. A member or employee of the gambling commission shall not:

- (1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;
- (2) Receive or share in, directly or indirectly, the gross profits of any gambling activity regulated by the commission;
- (3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of [a] gambling activity, or the provision of independent consultant services in connection with a gambling activity. [1986 c 4 § 1.]

9.46.090 Gambling commission—Reports. Subject to RCW 40.07.040, the commission shall, from time to time, make reports to the governor and the legislature covering such matters in connection with this chapter as the governor and the legislature may require. These reports shall be public documents and contain such general information and remarks as the commission deems pertinent thereto and any information requested by either the governor or members of the legislature: PROVIDED, That the commission appointed pursuant to RCW 9.46.040 may conduct a thorough study of the types of gambling activity permitted and the types of gambling activity prohibited by this chapter and may make recommendations to the legislature as to: (1) Gambling activity that ought to be permitted; (2) gambling activity that ought to be prohibited; (3) the types of licenses and permits that ought to be required; (4) the type and amount of tax that ought to be applied to each type of permitted gambling activity; (5) any changes which may be made to the law of this state which further the purposes and policies set forth in RCW 9.46.010 as now law or hereafter amended; and (6) any other matter that the commission may deem appropriate. Members of the commission and its staff may contact the legislature, or any of its members, at any time, to advise it of recommendations

of the commission. [1987 c 505 § 3; 1981 c 139 § 7; 1977 c 75 § 4; 1975 1st ex.s. c 166 § 4; 1973 1st ex.s. c 218 § 9.]

Additional notes found at www.leg.wa.gov

9.46.095 Gambling commission—Proceedings against, jurisdiction—Immunity from liability. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter 34.05 RCW, the Administrative Procedure Act.

Neither the commission nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done, or omitted to be done, by the commission or any member of the commission, or any employee of the commission, in the performance of his or her duties and in the administration of this title. [1989 c 175 § 41; 1981 c 139 § 17.]

Additional notes found at www.leg.wa.gov

9.46.100 Gambling revolving fund—Created—Receipts—Disbursements—Use. There is hereby created the gambling revolving fund which shall consist of all moneys receivable for licensing, penalties, forfeitures, and all other moneys, income, or revenue received by the commission. The state treasurer shall be custodian of the fund. All moneys received by the commission or any employee thereof, except for change funds and an amount of petty cash as fixed by rule or regulation of the commission, shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the gambling revolving fund. Disbursements from the revolving fund shall be on authorization of the commission or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the gambling revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. All expenses relative to commission business, including but not limited to salaries and expenses of the director and other commission employees shall be paid from the gambling revolving fund.

During the 2003-2005 fiscal biennium, the legislature may transfer from the gambling revolving fund to the problem gambling treatment account, contingent on enactment of chapter ..., Laws of 2004 (*Second Substitute House Bill No. 2776, problem gambling treatment). Also during the 2003-2005 fiscal biennium, the legislature may transfer from the gambling revolving fund to the state general fund such amounts as reflect the excess nontribal fund balance of the fund. The commission shall not increase fees during the 2003-2005 fiscal biennium for the purpose of restoring the excess fund balance transferred under this section. [2004 c 276 § 903; 2002 c 371 § 901; 1991 sp.s. c 16 § 917; 1985 c 405 § 505; 1977 ex.s. c 326 § 5; 1973 1st ex.s. c 218 § 10.]

*Reviser's note: Second Substitute House Bill No. 2776 was not enacted during the 2004 legislative session.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—2002 c 371: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 371 § 926.]

Effective date—2002 c 371: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 5, 2002]." [2002 c 371 § 927.]

Additional notes found at www.leg.wa.gov

9.46.110 Taxation of gambling activities—Limitations—Restrictions on punchboards and pull-tabs—Lien.

(1) The legislative authority of any county, city-county, city, or town, by local law and ordinance, and in accordance with the provisions of this chapter and rules adopted under this chapter, may provide for the taxing of any gambling activity authorized by this chapter within its jurisdiction, the tax receipts to go to the county, city-county, city, or town so taxing the activity. Any such tax imposed by a county alone shall not apply to any gambling activity within a city or town located in the county but the tax rate established by a county, if any, shall constitute the tax rate throughout the unincorporated areas of such county.

(2) The operation of punchboards and pull-tabs are subject to the following conditions:

- (a) Chances may only be sold to adults;
- (b) The price of a single chance may not exceed one dollar;
- (c) No punchboard or pull-tab license may award as a prize upon a winning number or symbol being drawn the opportunity of taking a chance upon any other punchboard or pull-tab;
- (d) All prizes available to be won must be described on an information flare. All merchandise prizes must be on display within the immediate area of the premises in which any such punchboard or pull-tab is located. Upon a winning number or symbol being drawn, a merchandise prize must be immediately removed from the display and awarded to the winner. All references to cash or merchandise prizes, with a value over twenty dollars, must be removed immediately from the information flare when won, or such omission shall be deemed a fraud for the purposes of this chapter; and
- (e) When any person wins money or merchandise from any punchboard or pull-tab over an amount determined by the commission, every licensee shall keep a public record of the award for at least ninety days containing such information as the commission shall deem necessary.

(3)(a) Taxation of bingo and raffles shall never be in an amount greater than five percent of the gross receipts from a bingo game or raffle less the amount awarded as cash or merchandise prizes.

(b) Taxation of amusement games shall only be in an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by the county, city or town law enforcement agency and in no event shall such taxation exceed two percent of the gross receipts from the amusement game less the amount awarded as prizes.

(c) No tax shall be imposed under the authority of this chapter on bingo or amusement games when such activities or any combination thereof are conducted by any bona fide

charitable or nonprofit organization as defined in this chapter, which organization has no paid operating or management personnel and has gross receipts from bingo or amusement games, or a combination thereof, not exceeding five thousand dollars per year, less the amount awarded as cash or merchandise prizes.

(d) No tax shall be imposed on the first ten thousand dollars of gross receipts less the amount awarded as cash or merchandise prizes from raffles conducted by any bona fide charitable or nonprofit organization as defined in this chapter.

(e) Taxation of punchboards and pull-tabs for bona fide charitable or nonprofit organizations is based on gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes, and shall not exceed a rate of ten percent. At the option of the county, city-county, city, or town, the taxation of punchboards and pull-tabs for commercial stimulant operators may be based on gross receipts from the operation of the games, and may not exceed a rate of five percent, or may be based on gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes, and may not exceed a rate of ten percent.

(f) Taxation of social card games may not exceed twenty percent of the gross revenue from such games.

(4) Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes. [1999 c 221 § 1; 1997 c 394 § 4; 1994 c 301 § 2; 1991 c 161 § 1; 1987 c 4 § 39. Prior: 1985 c 468 § 2; 1985 c 172 § 1; 1981 c 139 § 8; 1977 ex.s. c 198 § 1; 1974 ex.s. c 155 § 8; 1974 ex.s. c 135 § 8; 1973 1st ex.s. c 218 § 11.]

Additional notes found at www.leg.wa.gov

9.46.113 Taxation of gambling activities—Disbursement. Any county, city or town which collects a tax on gambling activities authorized pursuant to RCW 9.46.110 must use the revenue from such tax primarily for the purpose of public safety. [2010 c 127 § 6; 1975 1st ex.s. c 166 § 11.]

Additional notes found at www.leg.wa.gov

9.46.116 Fees on pull-tab and punchboard sales. The commission shall charge fees or increased fees on pull-tabs sold over-the-counter and on sales from punchboards and pull-tab devices at levels necessary to assure that the increased revenues are equal or greater to the amount of revenue lost by removing the special tax on coin-operated gambling devices by the 1984 repeal of *RCW 9.46.115. [1985 c 7 § 2; 1984 c 135 § 2.]

*Reviser's note: RCW 9.46.115 was repealed by 1984 c 135 § 1, effective July 1, 1984.

Additional notes found at www.leg.wa.gov

9.46.120 Restrictions on management or operation personnel—Restriction on leased premises. (1) Except in the case of an agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a member of a bona fide charitable or nonprofit organization (and their employees) or any other person, association or organization

(and their employees) approved by the commission, shall take any part in the management or operation of any gambling activity authorized under this chapter unless approved by the commission. No person who takes any part in the management or operation of any such gambling activity shall take any part in the management or operation of any gambling activity conducted by any other organization or any other branch of the same organization unless approved by the commission. No part of the proceeds of the activity shall inure to the benefit of any person other than the organization conducting such gambling activities or if such gambling activities be for the charitable benefit of any specific persons designated in the application for a license, then only for such specific persons as so designated.

(2) No bona fide charitable or nonprofit organization or any other person, association or organization shall conduct any gambling activity authorized under this chapter in any leased premises if rental for such premises is unreasonable or to be paid, wholly or partly, on the basis of a percentage of the receipts or profits derived from such gambling activity. [1997 c 394 § 3; 1987 c 4 § 40; 1973 1st ex.s. c 218 § 12.]

9.46.130 Inspection and audit of premises, paraphernalia, books, and records—Reports for the commission.

The premises and paraphernalia, and all the books and records of any person, association, or organization conducting gambling activities authorized under this chapter and any person, association, or organization receiving profits therefrom or having any interest therein shall be subject to inspection and audit at any reasonable time, with or without notice, upon demand, by the commission or its designee, the attorney general or his or her designee, the chief of the Washington state patrol or his or her designee or the prosecuting attorney, sheriff, or director of public safety or their designees of the county wherein located, or the chief of police or his or her designee of any city or town in which said organization is located, for the purpose of determining compliance or non-compliance with the provisions of this chapter and any rules or regulations or local ordinances adopted pursuant thereto. A reasonable time for the purpose of this section shall be: (1) If the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which they are usually open; or (2) if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) of this section, then any time between the hours of 8:00 a.m. and 9:00 p.m., Monday through Friday.

The commission shall be provided at such reasonable intervals as the commission shall determine with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of this chapter or any local ordinances relating thereto. [2011 c 336 § 303; 1981 c 139 § 10; 1975 1st ex.s. c 166 § 7; 1973 1st ex.s. c 218 § 13.]

Additional notes found at www.leg.wa.gov

9.46.140 Gambling commission—Investigations—Inspections—Hearing and subpoena power—Adminis-

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trative law judges. (1) The commission or its authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the commission's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, who may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in RCW 34.05.446, 34.05.449, and 34.05.452.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 42; 1981 c 67 § 16; 1977 ex.s. c 326 § 7; 1975 1st ex.s. c 166 § 8; 1973 1st ex.s. c 218 § 14.]

Additional notes found at www.leg.wa.gov

9.46.150 Injunctions—Voiding of licenses, permits, or certificates.

(1) Any activity conducted in violation of any provision of this chapter may be enjoined in an action commenced by the commission through the attorney general or by the prosecuting attorney or legal counsel of any city or town in which the prohibited activity may occur.

(2) When a violation of any provision of this chapter or any rule or regulation adopted pursuant hereto has occurred on any property or premises for which one or more licenses, permits, or certificates issued by this state, or any political subdivision or public agency thereof are in effect, all such licenses, permits and certificates may be voided and no license, permit, or certificate so voided shall be issued or re-

sued for such property or premises for a period of up to sixty days thereafter. [1973 1st ex.s. c 218 § 15.]

9.46.153 Applicants and licensees—Responsibilities and duties—Waiver of liability—Investigation statement as privileged. (1) It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted;

(2) All applicants and licensees shall consent to inspections, searches and seizures and the supplying of handwriting examples as authorized by this chapter and rules adopted hereunder;

(3) All licensees, and persons having any interest in licensees, including but not limited to employees and agents of licensees, and other persons required to be qualified under this chapter or rules of the commission shall have a duty to inform the commission or its staff of any action or omission which they believe would constitute a violation of this chapter or rules adopted pursuant thereto. No person who so informs the commission or the staff shall be discriminated against by an applicant or licensee because of the supplying of such information;

(4) All applicants, licensees, persons who are operators or directors thereof and persons who otherwise have a substantial interest therein shall have the continuing duty to provide any assistance or information required by the commission and to investigations conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee or officer or director thereof or person with a substantial interest therein, refuses to comply, the applicant or licensee may be denied or revoked by the commission;

(5) All applicants and licensees shall waive any and all liability as to the state of Washington, its agencies, employees and agents for any damages resulting from any disclosure or publication in any manner, other than a wilfully unlawful disclosure or publication, of any information acquired by the commission during its licensing or other investigations or inquiries or hearings;

(6) Each applicant or licensee may be photographed for investigative and identification purposes in accordance with rules of the commission;

(7) An application to receive a license under this chapter or rules adopted pursuant thereto constitutes a request for determination of the applicant's and those person's with an interest in the applicant, general character, integrity and ability to engage or participate in, or be associated with, gambling or related activities impacting this state. Any written or oral statement made in the course of an official investigation, proceeding or process of the commission by any member, employee or agent thereof or by any witness, testifying under oath, which is relevant to the investigation, proceeding or process, is absolutely privileged and shall not impose any liability for slander, libel or defamation, or constitute any grounds for recovery in any civil action. [1981 c 139 § 14.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

9.46.155 Applicants and licensees—Bribes to public officials, employees, agents—Penalty. (1) No applicant or licensee shall give or provide, or offer to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any of its agencies or political subdivisions, any compensation or reward, or share of the money or property paid or received through gambling activities, in consideration for obtaining any license, authorization, permission or privilege to participate in any gaming operations except as authorized by this chapter or rules adopted pursuant thereto.

(2) Violation of this section is a class C felony for which a person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both. [2003 c 53 § 34; 1981 c 139 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.46.158 Applicants, licensees, operators—Commission approval for hiring certain persons. No applicant for a license from, nor licensee of, the commission, nor any operator of any gambling activity, shall, without advance approval of the commission, knowingly permit any person to participate in the management or operation of any activity for which a license from the commission is required or which is otherwise authorized by this chapter if that person:

(1) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(2) Has violated, failed, or refused to comply with provisions, requirements, conditions, limitations or duties imposed by this chapter, and any amendments thereto, or any rules adopted by the commission pursuant thereto, or has permitted, aided, abetted, caused, or conspired with another to cause, any person to violate any of the provisions of this chapter or rules of the commission. [1981 c 139 § 18.]

Additional notes found at www.leg.wa.gov

9.46.160 Conducting activity without license. Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission shall be guilty of a class B felony. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [1991 c 261 § 3; 1975 1st ex.s. c 166 § 9; 1973 1st ex.s. c 218 § 16.]

Additional notes found at www.leg.wa.gov

9.46.170 False or misleading entries or statements, refusal to produce records. Whoever, in any application for a license or in any book or record required to be maintained

by the commission or in any report required to be submitted to the commission, shall make any false or misleading statement, or make any false or misleading entry or wilfully fail to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection by the commission, or its designee, any book, record, or document required to be maintained or made by federal or state law, shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 4; 1973 1st ex.s. c 218 § 17.]

9.46.180 Causing person to violate chapter. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter shall be guilty of a class B felony subject to the penalty in RCW 9A.20.021. [1991 c 261 § 5; 1977 ex.s. c 326 § 8; 1973 1st ex.s. c 218 § 18.]

9.46.185 Causing person to violate rule or regulation. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 6; 1977 ex.s. c 326 § 9.]

9.46.190 Violations relating to fraud or deceit. Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

- (1) Employ any device, scheme, or artifice to defraud; or
- (2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or
- (3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 7; 1977 ex.s. c 326 § 10; 1973 1st ex.s. c 218 § 19.]

9.46.192 Cities and towns—Ordinance enacting certain sections of chapter—Limitations—Penalties. Every city or town is authorized to enact as an ordinance of that city or town any or all of the sections of this chapter the violation of which constitutes a misdemeanor or gross misdemeanor. The city or town may not modify the language of any section of this chapter in enacting such section except as necessary to put the section in the proper form of an ordinance or to provide for a sentence [to] be served in the appropriate detention facility. The ordinance must provide for the same maximum penalty for its violation as may be imposed under the section in this chapter. [1977 ex.s. c 326 § 11.]

9.46.193 Cities and towns—Ordinance adopting certain sections of chapter—Jurisdiction of courts. District courts operating under the provisions of chapters 3.30 through 3.74 RCW, except municipal departments of such courts operating under chapter 3.46 RCW and municipal courts operating under chapter 3.50 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine misdemeanor and gross misdemeanor violations of this

chapter and violations of any ordinance passed under authority of this chapter by any city or town.

Municipal courts operating under chapters 35.20 or 3.50 RCW and municipal departments of the district court operating under chapter 3.46 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine violations of any ordinance passed under authority of this chapter by the city or town in which the court is located.

Notwithstanding any other provision of law, each of these courts shall have the jurisdiction and power to impose up to the maximum penalties provided for the violation of the ordinances adopted under the authority of this chapter. Review of the judgments of these courts shall be as provided in other criminal actions. [1977 ex.s. c 326 § 12.]

9.46.195 Obstruction of public servant—Penalty. No person shall intentionally obstruct or attempt to obstruct a public servant in the administration or enforcement of this chapter by using or threatening to use physical force or by means of any unlawful act. Any person who violates this section shall be guilty of a misdemeanor. [1974 ex.s. c 155 § 11; 1974 ex.s. c 135 § 11.]

Additional notes found at www.leg.wa.gov

9.46.196 Cheating—Defined. "Cheating," as used in this chapter, means to:

- (1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;
- (2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;
- (3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or
- (4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section. [2002 c 253 § 1; 1991 c 261 § 8; 1977 ex.s. c 326 § 13.]

9.46.1961 Cheating in the first degree. (1) A person is guilty of cheating in the first degree if he or she engages in cheating and:

- (a) Knowingly causes, aids, abets, or conspires with another to engage in cheating; or
- (b) Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.

(2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section the court may impose an additional penalty of up to twenty thousand dollars. [2002 c 253 § 2.]

9.46.1962 Cheating in the second degree. (1) A person is guilty of cheating in the second degree if he or she engages in cheating and his or her conduct does not constitute cheating in the first degree.

(2) Cheating in the second degree is a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [2002 c 253 § 3.]

9.46.198 Working in gambling activity without license as violation—Penalty. Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under RCW 9.46.070(17) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by up to three hundred sixty-four days in the county jail or a fine of not more than five thousand dollars, or both. [2011 c 96 § 7; 1999 c 143 § 7; 1977 ex.s. c 326 § 14.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

9.46.200 Action for money damages due to violations—Interest—Attorneys' fees—Evidence for exoneration. In addition to any other penalty provided for in this chapter, every person, directly or indirectly controlling the operation of any gambling activity authorized by this chapter, including a director, officer, and/or manager of any association, organization, or corporation conducting the same, whether charitable, nonprofit, or profit, shall be liable, jointly and severally, for money damages suffered by any person because of any violation of this chapter, together with interest on any such amount of money damages at six percent per annum from the date of the loss, and reasonable attorneys' fees: PROVIDED, That if any such director, officer, and/or manager did not know any such violation was taking place and had taken all reasonable care to prevent any such violation from taking place, and if such director, officer, and/or manager shall establish by a preponderance of the evidence that he or she did not have such knowledge and that he or she had exercised all reasonable care to prevent the violations he or she shall not be liable hereunder. Any civil action under this section may be considered a class action. [2011 c 336 § 304; 1987 c 4 § 41; 1974 ex.s. c 155 § 10; 1974 ex.s. c 135 § 10; 1973 1st ex.s. c 218 § 20.]

Additional notes found at www.leg.wa.gov

9.46.210 Enforcement—Commission as a law enforcement agency. (1) It shall be the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter.

(2) In addition to the authority granted by subsection (1) of this section law enforcement agencies of cities and counties shall investigate and report to the commission all violations of the provisions of this chapter and of the rules of the commission found by them and shall assist the commission in any of its investigations and proceedings respecting any such violations. Such law enforcement agencies shall not be deemed agents of the commission.

(3) In addition to its other powers and duties, the commission shall have the power to enforce the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession,

and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, both assistant directors, and each of the commission's investigators, enforcement officers, and inspectors shall have the power, under the supervision of the commission, to enforce the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth above, the commission shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter, as now law or hereafter amended, and to obtain information from and provide information to all other law enforcement agencies.

(4) Criminal history record information that includes nonconviction data, as defined in RCW 10.97.030, may be disseminated by a criminal justice agency to the Washington state gambling commission for any purpose associated with the investigation for suitability for involvement in gambling activities authorized under this chapter. The Washington state gambling commission shall only disseminate nonconviction data obtained under this section to criminal justice agencies. [2000 c 46 § 1; 1981 c 139 § 11; 1977 ex.s. c 326 § 15; 1975 1st ex.s. c 166 § 10; 1974 ex.s. c 155 § 9; 1974 ex.s. c 135 § 9; 1973 1st ex.s. c 218 § 21.]

***Reviser's note:** 1973 1st ex.s. c 218 consisted entirely of chapter 9.46 RCW and the repeal of various former laws regulating gambling.

Additional notes found at www.leg.wa.gov

9.46.215 Ownership or interest in gambling device—Penalty—Exceptions. (1) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a class C felony and shall be fined not more than one hundred thousand dollars or imprisoned not more than five years or both.

(2) This section does not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices that are to be used, or are being used, solely in that activity for which the license was

issued, or for which the person has been otherwise authorized if:

(a) The person is acting in conformance with this chapter and the rules adopted under this chapter; and

(b) The devices are a type and kind traditionally and usually employed in connection with the particular activity.

(3) This section also does not apply to any act or acts by the persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when the activity is conducted in compliance with this chapter and in accordance with the rules adopted under this chapter.

(4) In the enforcement of this section direct possession of any such a gambling device is presumed to be knowing possession thereof. [2003 c 53 § 35; 1994 c 218 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.46.217 Gambling records—Penalty—Exceptions.

Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a gross misdemeanor. However, this section does not apply to records relating to and kept for activities authorized by this chapter when the records are of the type and kind traditionally and usually employed in connection with the particular activity. This section also does not apply to any act or acts in furtherance of the activities when conducted in compliance with this chapter and in accordance with the rules adopted under this chapter. In the enforcement of this section direct possession of any such a gambling record is presumed to be knowing possession thereof. [1994 c 218 § 10.]

Additional notes found at www.leg.wa.gov

9.46.220 Professional gambling in the first degree.

(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) Acts in concert with or conspires with five or more people; or

(b) Personally accepts wagers exceeding five thousand dollars during any thirty-day period on future contingent events; or

(c) The operation for whom the person works, or with which the person is involved, accepts wagers exceeding five thousand dollars during any thirty-day period on future contingent events; or

(d) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games, lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021.

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[1997 c 78 § 2; 1994 c 218 § 11; 1991 c 261 § 10; 1987 c 4 § 42; 1973 1st ex.s. c 218 § 22.]

Additional notes found at www.leg.wa.gov

9.46.221 Professional gambling in the second degree.

(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) Acts in concert with or conspires with less than five people; or

(b) Accepts wagers exceeding two thousand dollars during any thirty-day period on future contingent events; or

(c) The operation for whom the person works, or with which the person is involved, accepts wagers exceeding two thousand dollars during any thirty-day period on future contingent events; or

(d) Maintains a "gambling premises" as defined in this chapter; or

(e) Maintains gambling records as defined in RCW 9.46.0253.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. [1997 c 78 § 3; 1994 c 218 § 12; 1991 c 261 § 11.]

Additional notes found at www.leg.wa.gov

9.46.222 Professional gambling in the third degree.

(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) His or her conduct does not constitute first or second degree professional gambling;

(b) He or she operates any of the unlicensed gambling activities authorized by this chapter in a manner other than as prescribed by this chapter; or

(c) He or she is directly employed in but not managing or directing any gambling operation.

(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.

(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021. [1994 c 218 § 13; 1991 c 261 § 12.]

Additional notes found at www.leg.wa.gov

9.46.225 Professional gambling—Penalties not applicable to authorized activities.

The penalties provided for professional gambling in this chapter shall not apply to the activities authorized by this chapter when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations of the commission. [1987 c 4 § 37. Formerly RCW 9.46.030(11).]

(2012 Ed.)

9.46.228 Gambling activities by persons under age eighteen prohibited—Penalties—Jurisdiction—In-house controlled purchase programs authorized. (1) It is unlawful for any person under the age of eighteen to play in authorized gambling activities including, but not limited to, punchboards, pull-tabs, or card games, or to participate in fund-raising events. Persons under the age of eighteen may play bingo, raffles, and amusement game activities only as provided in commission rules.

(2) A person under the age of eighteen who violates subsection (1) of this section by engaging in, or attempting to engage in, prohibited gambling activities commits a class 2 civil infraction under chapter 7.80 RCW and is subject to a fine set out in chapter 7.80 RCW, up to four hours of community restitution, and any court imposed costs.

(3) The juvenile court divisions in superior courts within the state have jurisdiction for enforcement of this section.

(4)(a) An employer may conduct an in-house controlled purchase program authorized for the purposes of employee training and employer self-compliance checks.

(b) The civil infraction provisions of this section do not apply to a person under the age of eighteen who is participating in an in-house controlled purchase program authorized by the commission under rules adopted by the commission. Violations occurring under an in-house controlled purchase program authorized by the commission may not be used for criminal or administrative prosecution.

(c) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding unauthorized persons engaging in gambling activities during a controlled purchase program authorized under this section.

(5) A person under the age of eighteen who violates subsection (1) of this section shall not collect any winnings or recover any losses arising as a result of unlawfully participating in any gambling activity. Additionally, any money or anything of value which has been obtained by, or is owed to, any person under the age of eighteen as a result of such participation shall be forfeited to the department of social and health services division of alcohol and substance abuse or its successor and used for a program related to youth problem gambling awareness, prevention, and/or education. Any person claiming any money or things of value subject to forfeiture under this subsection will receive notice and an opportunity for a hearing under RCW 9.46.231. [2009 c 357 § 2.]

9.46.231 Gambling devices, real and personal property—Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All gambling devices as defined in this chapter;

(b) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises;

(c) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, in any manner to facilitate the sale, delivery, receipt, or operation of any gambling device, or the promotion or operation of a professional gambling activity, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) If the owner of a conveyance has been arrested under this chapter the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and electronic data that are used, or intended for use, in violation of this chapter;

(e) All moneys, negotiable instruments, securities, or other tangible or intangible property of value at stake or displayed in or in connection with professional gambling activity or furnished or intended to be furnished by any person to facilitate the promotion or operation of a professional gambling activity;

(f) All tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to professional gambling activity and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. Personal property may not be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission that that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements that:

(i) Have been used with the knowledge of the owner for the manufacturing, processing, delivery, importing, or exporting of any illegal gambling equipment, or operation of a professional gambling activity that would constitute a felony violation of this chapter; or

(ii) Have been acquired in whole or in part with proceeds traceable to a professional gambling activity, if the activity is not less than a class C felony.

Real property forfeited under this chapter that is encumbered by a bona fide security interest remains subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of

nor consented to the act or omission. Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent.

(2)(a) A law enforcement officer of this state may seize real or personal property subject to forfeiture under this chapter upon process issued by any superior court having jurisdiction over the property. Seizure of real property includes the filing of a *lis pendens* by the seizing agency. Real property seized under this section may not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later, but real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a bona fide security interest.

(b) Seizure of personal property without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(ii) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(iii) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure under subsection (2) of this section, proceedings for forfeiture are deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property must be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, must be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property,

the item seized is deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons must be afforded a reasonable opportunity to be heard as to the claim or right. The hearing must be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except if the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing must be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed must be the district court if the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom must be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. In cases involving personal property, the burden of producing evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving property seized under subsection (1)(a) of this section, the only issues to be determined by the tribunal are whether the item seized is a gambling device, and whether the device is an antique device as defined by RCW 9.46.235. In cases involving real property, the burden of producing evidence is upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture is upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a final determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

(6) If property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to the agency for training or use in enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public; or

(c) Destroy any articles that may not be lawfully possessed within the state of Washington, or that have a fair market value of less than one hundred dollars.

(7)(a) If property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property. The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure, and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(8) The seizing law enforcement agency shall retain forfeited property and net proceeds exclusively for the expansion and improvement of gambling-related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(9) Gambling devices that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and must be seized and summarily forfeited to the state. Gambling equipment that is seized or comes into the possession of a law enforcement agency, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. The superior court shall enter orders for the forfeiture of real property, subject to court rules. The seizing agency shall file such an order in the county auditor's records in the county in which the real property is located.

(11)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (6)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer before asserting a claim under this section.

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search; and

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency shall notify the landlord of the status of the claim by the end of the thirty-day period. This section does

not require the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency within seven days of receipt of notification of the illegal activity.

(12) The landlord's claim for damages under subsection (11) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (6)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (7)(a) of this section.

(13) Subsections (11) and (12) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

(14) Liability is not imposed by this section upon any authorized state, county, or municipal officer, including a commission special agent, in the lawful performance of his or her duties. [2008 c 6 § 629; 1997 c 128 § 1; 1994 c 218 § 7.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

9.46.235 Slot machines, antique—Defenses concerning—Presumption created. (1) For purposes of a prosecution under RCW 9.46.215 or a seizure, confiscation, or destruction order under RCW 9.46.231, it shall be a defense that the gambling device involved is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or defendant's possession. Operation of an antique slot machine shall be only by free play or with coins provided at no cost by the owner. No slot machine, having been seized under this chapter, may be altered, destroyed, or disposed of without affording the owner thereof an opportunity to present a defense under this section. If the defense is applicable, the antique slot machine shall be returned to the owner or defendant, as the court may direct.

(2) RCW 9.46.231 shall have no application to any antique slot machine that has not been operated for gambling purposes while in the owner's possession.

(3) For the purposes of this section, a slot machine shall be conclusively presumed to be an antique slot machine if it is at least twenty-five years old.

(4) RCW 9.46.231 and 9.46.215 do not apply to gambling devices on board a passenger cruise ship which has been registered and bonded with the federal maritime commission, if the gambling devices are not operated for gambling purposes within the state. [1994 c 218 § 15; 1987 c 191 § 1; 1977 ex.s. c 165 § 1.]

Additional notes found at www.leg.wa.gov

9.46.240 Gambling information, transmitting or receiving. Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunications transmission system, or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a class C felony subject to the penalty set forth in RCW 9A.20.021. However, this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted under this chapter. [2006 c 290 § 2; 1991 c 261 § 9; 1987 c 4 § 44; 1973 1st ex.s. c 218 § 24.]

State policy—2006 c 290: "It is the policy of this state to prohibit all forms and means of gambling, except where carefully and specifically authorized and regulated. With the advent of the internet and other technologies and means of communication that were not contemplated when either the gambling act was enacted in 1973, or the lottery commission was created in 1982, it is appropriate for this legislature to reaffirm the policy prohibiting gambling that exploits such new technologies." [2006 c 290 § 1.]

9.46.250 Gambling property or premises—Common nuisances, abatement—Termination of interests, licenses—Enforcement. (1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. The plaintiff in any action brought under this subsection against any gambling premises, need not show special injury and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise held under a mortgage, contract, or leasehold is determined by a court having jurisdiction to be a gambling premises, all rights and interests of the holder therein shall terminate and the owner shall be entitled to immediate possession at his or her election: PROVIDED, HOWEVER, That this subsection shall not apply to those premises in which activities authorized by this chapter or any act or acts in furtherance thereof are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(3) When any property or premises for which one or more licenses issued by the commission are in effect, is determined by a court having jurisdiction to be a gambling premise, all such licenses may be voided and no longer in effect, and no license so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. Enforcement of this subsection shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies. This subsection shall not apply to property or premises in which activities authorized by this chapter, or any act or

acts in furtherance thereof, are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [2011 c 336 § 305; 1987 c 4 § 45; 1973 1st ex.s. c 218 § 25.]

9.46.260 Proof of possession as evidence of knowledge of its character. Proof of possession of any device used for professional gambling or any record relating to professional gambling specified in RCW 9.46.215 is prima facie evidence of possession thereof with knowledge of its character or contents. [1994 c 218 § 16; 1973 1st ex.s. c 218 § 26.]

Additional notes found at www.leg.wa.gov

9.46.270 Taxing authority, exclusive. This chapter shall constitute the exclusive legislative authority for the taxing by any city, town, city-county or county of any gambling activity and its application shall be strictly construed to those activities herein permitted and to those persons, associations or organizations herein permitted to engage therein. [1973 1st ex.s. c 218 § 27.]

9.46.285 Licensing and regulation authority, exclusive. This chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except as to the powers and duties of any city, town, city-county, or county which are specifically set forth in this chapter. Any ordinance, resolution, or other legislative act by any city, town, city-county, or county relating to gambling in existence on September 27, 1973 shall be as of that date null and void and of no effect. Any such city, town, city-county, or county may thereafter enact only such local law as is consistent with the powers and duties expressly granted to and imposed upon it by chapter 9.46 RCW and which is not in conflict with that chapter or with the rules of the commission. [1973 2nd ex.s. c 41 § 8.]

9.46.291 State lottery exemption. The provisions of this chapter shall not apply to the conducting, operating, participating, or selling or purchasing of tickets or shares in the "lottery" or "state lottery" as defined in RCW 67.70.010 when such conducting, operating, participating, or selling or purchasing is in conformity to the provisions of chapter 67.70 RCW and to the rules adopted thereunder. [1982 2nd ex.s. c 7 § 39.]

Additional notes found at www.leg.wa.gov

9.46.293 Fishing derbies exempted. Any fishing derby, defined under RCW 9.46.0229, shall not be subject to any other provisions of this chapter or to any rules or regulations of the commission. [1989 c 8 § 1; 1975 1st ex.s. c 166 § 13.]

Additional notes found at www.leg.wa.gov

9.46.295 Licenses, scope of authority—Exception. (1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area

of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2)(a) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of July 26, 2009, to continue operating if the city or town is authorized to impose a tax under RCW 82.14.415 and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW 82.14.415(7).

(b) A city or town that allowed a house-banked social card game business in an annexed area to continue operating under (a) of this subsection before July 15, 2010, shall allow all social card game businesses in the annexed area that were operating and licensed by the commission as of January 1, 2011, to continue operating.

(c) A city or town that allows a social card game business in an annexed area to continue operating is not required to allow additional social card game businesses. [2011 c 134 § 1; 2009 c 550 § 2; 1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]

Additional notes found at www.leg.wa.gov

9.46.300 Licenses and reports—Public inspection—Exceptions and requirements—Charges. All applications for licenses made to the commission, with the exception of any portions of the applications describing the arrest or conviction record of any person, and all reports required by the commission to be filed by its licensees on a periodic basis concerning the operation of the licensed activity or concerning any organization, association, or business in connection with which a licensed activity is operated, in the commission files, shall be open to public inspection at the commission's offices upon a prior written request of the commission. The staff of the commission may decline to allow an inspection until such time as the inspection will not unduly interfere with the other duties of the staff. The commission may charge the person making a request for an inspection an amount necessary to offset the costs to the commission of providing the inspection and copies of any requested documents. [1977 ex.s. c 326 § 17.]

9.46.310 Licenses for manufacture, sale, distribution, or supply of gambling devices. No person shall manufacture, and no person shall sell, distribute, furnish or supply to any other person, any gambling device, including but not limited to punchboards and pull-tabs, in this state, or for use within this state, without first obtaining a license to do so from the commission under the provisions of this chapter.

Such licenses shall not be issued by the commission except respecting devices which are designed and permitted for use in connection with activities authorized under this chapter: PROVIDED, That this requirement for licensure shall apply only insofar as the commission has adopted, or may adopt, rules implementing it as to particular categories of gambling devices and related equipment. [1981 c 139 § 13.]

(2012 Ed.)

Additional notes found at www.leg.wa.gov

9.46.350 Civil action to collect fees, interest, penalties, or tax—Writ of attachment—Records as evidence. At any time within five years after any amount of fees, interest, penalties, or tax which is imposed pursuant to this chapter, or rules adopted pursuant thereto, shall become due and payable, the attorney general, on behalf of the commission, may bring a civil action in the courts of this state, or any other state, or of the United States, to collect the amount delinquent, together with penalties and interest: PROVIDED, That where the tax is one imposed by a county, city or town under RCW 9.46.110, any such action shall be brought by that county, city or town on its own behalf. An action may be brought whether or not the person owing the amount is at such time a licensee pursuant to the provisions of this chapter.

If such an action is brought in the courts of this state, a writ of attachment may be issued and no bond or affidavit prior to the issuance thereof shall be required. In all actions in this state, the records of the commission, or the appropriate county, city or town, shall be prima facie evidence of the determination of the tax due or the amount of the delinquency. [1981 c 139 § 16.]

Additional notes found at www.leg.wa.gov

9.46.360 Indian tribes—Compact negotiation process. (1) The negotiation process for compacts with federally recognized Indian tribes for conducting class III gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., on federal Indian lands is governed by this section.

(2) The gambling commission through the director or the director's designee shall negotiate compacts for class III gaming on behalf of the state with federally recognized Indian tribes in the state of Washington.

(3) When a tentative agreement with an Indian tribe on a proposed compact is reached, the director shall immediately transmit a copy of the proposed compact to all voting and ex officio members of the gambling commission and to the standing committees designated pursuant to subsection (5) of this section.

(4) Notwithstanding RCW 9.46.040, the four ex officio members of the gambling commission shall be deemed voting members of the gambling commission for the sole purpose of voting on proposed compacts submitted under this section.

(5) Within thirty days after receiving a proposed compact from the director, one standing committee from each house of the legislature shall hold a public hearing on the proposed compact and forward its respective comments to the gambling commission. The president of the senate shall designate the senate standing committee that is to carry out the duties of this section, and the speaker of the house of representatives shall designate the house standing committee that is to carry out the duties of this section. The designated committees shall continue to perform under this section until the president of the senate or the speaker of the house of representatives, as the case may be, designates a different standing committee.

(6) The gambling commission may hold public hearings on the proposed compact any time after receiving a copy of the compact from the director. Within forty-five days after receiving the proposed compact from the director, the gambling commission, including the four ex officio members, shall vote on whether to return the proposed compact to the director with instructions for further negotiation or to forward the proposed compact to the governor for review and final execution.

(7) Notwithstanding provisions in this section to the contrary, if the director forwards a proposed compact to the gambling commission and the designated standing committees within ten days before the beginning of a regular session of the legislature, or during a regular or special session of the legislature, the thirty-day time limit set forth in subsection (5) of this section and the forty-five day limit set forth in subsection (6) of this section are each forty-five days and sixty days, respectively.

(8) Funding for the negotiation process under this section must come from the gambling revolving fund.

(9) In addition to the powers granted under this chapter, the commission, consistent with the terms of any compact, is authorized and empowered to enforce the provisions of any compact between a federally recognized Indian tribe and the state of Washington. [1992 c 172 § 2.]

Additional notes found at www.leg.wa.gov

9.46.36001 Tribal actions—Federal jurisdiction. The state consents to the jurisdiction of the federal courts in actions brought by a tribe pursuant to the Indian gaming regulatory act of 1988 or seeking enforcement of a state/tribal compact adopted under the Indian gaming regulatory act, conditioned upon the tribe entering into such a compact and providing similar consent. This limited waiver of sovereign immunity shall not extend to actions other than those expressly set forth herein. [2007 c 321 § 1; 2001 c 236 § 1.]

9.46.400 Wildlife raffle. Any raffle authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to any provisions of this chapter other than RCW 9.46.010 and this section or to any rules or regulations of the gambling commission. [1996 c 101 § 3.]

Findings—1996 c 101: See note following RCW 77.32.530.

9.46.410 Use of public assistance electronic benefit cards prohibited—Licensee to report violations—Suspension of license. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of participating in any of the activities authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580.

(3) Any licensee authorized under this chapter is required to comply with RCW 74.08.580(2). If the licensee fails to comply with RCW 74.08.580(2), its license shall be immediately suspended until it complies with RCW 74.08.580(2). If the licensee remains otherwise eligible to be licensed, the commission may reinstate the license once the

licensee has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 19; 2002 c 252 § 2.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

9.46.420 RCW 9.46.410 to be negotiated with Indian tribes. The commission shall consider the provisions of RCW 9.46.410 as elements to be negotiated with federally recognized Indian tribes as provided in RCW 9.46.360. [2002 c 252 § 3.]

9.46.900 Severability—1973 1st ex.s. c 218. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 218 § 31.]

Reviser's note: See note following RCW 9.46.010.

9.46.901 Intent—1987 c 4. The separation of definitions and authorized activities provisions of the state's gambling statutes into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the provisions involved. [1987 c 4 § 1.]

9.46.902 Construction—1987 c 4. This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections. [1987 c 4 § 48.]

9.46.903 Intent—1994 c 218. The legislature intends with chapter 218, Laws of 1994 to clarify the state's public policy on gambling regarding the frequency of state lottery drawings, the means of addressing problem and compulsive gambling, and the enforcement of the state's gambling laws. Chapter 218, Laws of 1994 is intended to clarify the specific types of games prohibited in chapter 9.46 RCW and is not intended to add to existing law regarding prohibited activities. The legislature recognizes that slot machines, video pull-tabs, video poker, and other electronic games of chance have been considered to be gambling devices before April 1, 1994. [1994 c 218 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 9.47 RCW GAMBLING

Sections

9.47.080	Bucket shop defined.
9.47.090	Maintaining bucket shop—Penalty.
9.47.100	Written statement to be furnished—Presumption.
9.47.120	Bunco steering.

Action to recover

leased premises used for gambling: RCW 4.24.080.
money lost at gambling: RCW 4.24.070, 4.24.090.

Baseball, bribery and illegal practices: RCW 67.04.010, 67.04.020, 67.04.050.

Gaming apparatus, search and seizure: RCW 10.79.015.

Sporting contests, fraud: RCW 67.24.010.

9.47.080 Bucket shop defined. A bucket shop is hereby defined to be a shed, tent, tenement, booth, building, float or vessel, or any part thereof, wherein may be made contracts respecting the purchase or sale upon margin or credit of any commodities, securities, or property, or option for the purchase thereof, wherein both parties intend that such contract shall or may be terminated, closed and settled; either,

(1) Upon the basis of the market prices quoted or made on any board of trade or exchange upon which such commodities, securities, or property may be dealt in; or,

(2) When the market prices for such commodities, securities or property shall reach a certain figure in any such board of trade or exchange; or,

(3) On the basis of the difference in the market prices at which said commodities, securities or property are, or purport to be, bought and sold. [1909 c 249 § 223; RRS § 2475.]

Securities and investments: Title 21 RCW.

9.47.090 Maintaining bucket shop—Penalty. Every person, whether in his or her own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in RCW 9.47.080, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years. [2003 c 53 § 36; 1992 c 7 § 13; 1909 c 249 § 224; RRS § 2476.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.47.100 Written statement to be furnished—Presumption. Every person, whether in his or her own behalf, or as the servant, agent, or employee of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities, or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him or her that such purchase or sale was made in violation of RCW 9.47.090. [2011 c 336 § 306; 1909 c 249 § 225; RRS § 2477.]

9.47.120 Bunco steering. Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan

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any money or property, or representative of either, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 37; 1992 c 7 § 14; 1909 c 249 § 227; RRS § 2479.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Swindling: Chapter 9A.60 RCW.

Chapter 9.47A RCW INHALING TOXIC FUMES (Formerly: Glue sniffing)

Sections

9.47A.010	Definition.
9.47A.020	Unlawful inhalation—Exception.
9.47A.030	Possession of certain substances prohibited, when.
9.47A.040	Sale of certain substances prohibited, when.
9.47A.050	Penalty.

9.47A.010 Definition. As used in this chapter, the phrase "substance containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any substance containing one or more of the following chemical compounds:

- (1) Acetone;
- (2) Amylacetate;
- (3) Benzol or benzene;
- (4) Butyl acetate;
- (5) Butyl alcohol;
- (6) Carbon tetrachloride;
- (7) Chloroform;
- (8) Cyclohexanone;
- (9) Ethanol or ethyl alcohol;
- (10) Ethyl acetate;
- (11) Hexane;
- (12) Isopropanol or isopropyl alcohol;
- (13) Isopropyl acetate;
- (14) Methyl "cellosolve" acetate;
- (15) Methyl ethyl ketone;
- (16) Methyl isobutyl ketone;
- (17) Toluol or toluene;
- (18) Trichloroethylene;
- (19) Tricresyl phosphate;
- (20) Xylol or xylene; or
- (21) Any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors. [1984 c 68 § 1; 1969 ex.s. c 149 § 1.]

9.47A.020 Unlawful inhalation—Exception. It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance as defined in RCW 9.47A.010 or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes. This section does not apply to the inhalation of any anesthesia for medical or dental purposes. [1984 c 68 § 2; 1969 ex.s. c 149 § 2.]

9.47A.030 Possession of certain substances prohibited, when. No person may, for the purpose of violating RCW 9.47A.020, use, or possess for the purpose of so using, any substance containing a solvent having the property of releasing toxic vapors or fumes. [1984 c 68 § 3; 1969 ex.s. c 149 § 3.]

9.47A.040 Sale of certain substances prohibited, when. No person may sell, offer to sell, deliver, or give to any other person any container of a substance containing a solvent having the property of releasing toxic vapors or fumes, if he or she has knowledge that the product sold, offered for sale, delivered, or given will be used for the purpose set forth in RCW 9.47A.020. [2011 c 336 § 307; 1984 c 68 § 4; 1969 ex.s. c 149 § 4.]

9.47A.050 Penalty. Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or by both. [1969 ex.s. c 149 § 5.]

Chapter 9.51 RCW

JURIES, CRIMES RELATING TO

Sections

9.51.010	Misconduct of officer drawing jury.
9.51.020	Soliciting jury duty.
9.51.030	Misconduct of officer in charge of jury.
9.51.040	Grand juror acting after challenge allowed.
9.51.050	Disclosing transaction of grand jury.
9.51.060	Disclosure of deposition returned by grand jury.

Grand juries: Chapter 10.27 RCW.

Juries: Chapter 2.36 RCW.

Juror asking or receiving bribe: RCW 9A.72.100.

Trial

district courts: Chapter 12.12 RCW.

generally: Chapter 4.44 RCW.

9.51.010 Misconduct of officer drawing jury. Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall—

- (1) Place in any such list any name at the request or solicitation, direct or indirect, of any person; or
- (2) Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or
- (3) Designedly omit to place upon such list any name which was lawfully drawn; or
- (4) Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or
- (5) Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or

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(6) In drawing or impanelling such jury, do any act which is unfair, partial or improper in any respect;

Shall be guilty of a gross misdemeanor. [1909 c 249 § 75; Code 1881 § 922; 1854 p 94 § 107; RRS § 2327.]

9.51.020 Soliciting jury duty. Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his or her name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. [2011 c 336 § 308; 1909 c 249 § 76; 1888 p 114 § 1; RRS § 2328.]

9.51.030 Misconduct of officer in charge of jury. Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury room, shall be guilty of a gross misdemeanor. [1909 c 249 § 77; RRS § 2329.]

9.51.040 Grand juror acting after challenge allowed. Every grand juror who, with knowledge that a challenge interposed against him or her by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. [2011 c 336 § 309; 1909 c 249 § 121; RRS § 2373.]

9.51.050 Disclosing transaction of grand jury. Every judge, grand juror, prosecuting attorney, clerk, stenographer, or other officer who, except in the due discharge of his or her official duty, shall disclose the fact that a presentment has been made or indictment found or ordered against any person, before such person shall be in custody; and every grand juror, clerk, or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion, or vote of the grand jury or any member thereof, shall be guilty of a misdemeanor. [2011 c 336 § 310; 1909 c 249 § 126; Code 1881 § 991; 1854 p 111 § 56; RRS § 2378.]

9.51.060 Disclosure of deposition returned by grand jury. Every clerk of any court or other officer who shall willfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his or her deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. [2011 c 336 § 311; 1909 c 249 § 127; RRS § 2379.]

Chapter 9.54 RCW

STOLEN PROPERTY RESTORATION

Sections

9.54.130 Restoration of stolen property—Duty of officers.

Theft and robbery: Chapter 9A.56 RCW.

9.54.130 Restoration of stolen property—Duty of officers. The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his or her hands, and shall annex a schedule thereof to his or her return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his or her demand, shall deliver it to him or her and take his or her receipt therefor, after which such prosecuting attorney shall be answerable for the same. [2011 c 336 § 312; 1909 c 249 § 357; RRS § 2609.]

Chapter 9.55 RCW

LEGISLATURE, CRIMES RELATING TO

Sections

9.55.020 Witness refusing to attend legislature or committee or to testify.

9.55.020 Witness refusing to attend legislature or committee or to testify. Every person duly summoned to attend as a witness before either house of the legislature of this state, or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend pursuant to such summons, or who shall willfully refuse to be sworn or to affirm or to answer any material or proper question or to produce, upon reasonable notice, any material or proper books, papers or documents in his or her possession or under his or her control, shall be guilty of a gross misdemeanor. [2011 c 336 § 313; 1909 c 249 § 86; RRS § 2338.]

Candidate buying liquor for another person on election day: RCW 66.44.265.

Legislative inquiry: Chapter 44.16 RCW.

Chapter 9.61 RCW

MALICIOUS MISCHIEF—INJURY TO PROPERTY

Sections

9.61.160 Threats to bomb or injure property—Penalty.
 9.61.190 Carrier or racing pigeons—Injury to.
 9.61.200 Carrier or racing pigeons—Removal or alteration of identification.
 9.61.230 Telephone harassment.
 9.61.240 Telephone harassment—Permitting telephone to be used.
 9.61.250 Telephone harassment—Offense, where deemed committed.
 9.61.260 Cyberstalking.

Endangering life by breach of labor contract: RCW 49.44.080.

Explosives, endangering life or property: RCW 70.74.270, 70.74.280, 70.74.310.

Insured property, injury or destruction: RCW 48.30.220.

Malicious mischief: RCW 9A.48.070 through 9A.48.100.

Mutilation or destruction of property by school official: RCW 28A.635.070.

Nuisance: Chapter 9.66 RCW.

Ownership of property—Proof of: RCW 10.58.060.

Public library property, intentional injury: RCW 27.12.330.

9.61.160 Threats to bomb or injure property—Penalty. (1) It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any govern-

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mental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated.

(2) It shall not be a defense to any prosecution under this section that the threatened bombing or injury was a hoax.

(3) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 38; 1977 ex.s. c 231 § 1; 1959 c 141 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Explosives, endangering life or property: RCW 70.74.270, 70.74.280, 70.74.310.

9.61.190 Carrier or racing pigeons—Injury to. It is a class 1 civil infraction for any person, other than the owner thereof or his or her authorized agent, to knowingly shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Racing Pigeon, commonly called "carrier or racing pigeons", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. [2011 c 336 § 314; 1987 c 456 § 25; 1963 c 69 § 1.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Additional notes found at www.leg.wa.gov

9.61.200 Carrier or racing pigeons—Removal or alteration of identification. It is a class 2 civil infraction for any person other than the owner thereof or his or her authorized agent to remove or alter any stamp, leg band, ring, or other mark of identification attached to any Antwerp Messenger or Racing Pigeon. [2011 c 336 § 315; 1987 c 456 § 26; 1963 c 69 § 2.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Additional notes found at www.leg.wa.gov

9.61.230 Telephone harassment. (1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household; is guilty of a gross misdemeanor, except as provided in subsection (2) of this section.

(2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection (1)(c) of this section by threatening to kill the person threatened or any other person. [2003 c 53 § 39; 1992 c 186 § 6; 1985 c 288 § 11; 1967 c 16 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Communicating with child for immoral purposes: RCW 9.68A.090.

Interference with telephone message: RCW 9A.48.070, 9A.48.080.

Additional notes found at www.leg.wa.gov

9.61.240 Telephone harassment—Permitting telephone to be used. Any person who knowingly permits any telephone under his or her control to be used for any purpose prohibited by RCW 9.61.230 shall be guilty of a misdemeanor. [2011 c 336 § 316; 1967 c 16 § 2.]

9.61.250 Telephone harassment—Offense, where deemed committed. Any offense committed by use of a telephone as set forth in RCW 9.61.230 may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. [1967 c 16 § 3.]

9.61.260 Cyberstalking. (1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

(a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

(b) Anonymously or repeatedly whether or not conversation occurs; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(2) Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Cyberstalking is a class C felony if either of the following applies:

(a) The perpetrator has previously been convicted of the crime of harassment, as defined in RCW 9A.46.060, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or

(b) The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

(4) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

(5) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging. [2004 c 94 § 1.]

Severability—2004 c 94: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [2004 c 94 § 6.]

Effective dates—2004 c 94: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2004], except for section 3 of this act, which takes effect July 1, 2004." [2004 c 94 § 7.]

Chapter 9.62 RCW

MALICIOUS PROSECUTION—ABUSE OF PROCESS

Sections

9.62.010	Malicious prosecution.
9.62.020	Instituting suit in name of another.

9.62.010 Malicious prosecution. Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [2003 c 53 § 40; 1992 c 7 § 15; 1909 c 249 § 117; Code 1881 § 899; 1873 p 203 § 98; 1854 p 92 § 89; RRS § 2369.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.62.020 Instituting suit in name of another. Every person who shall institute or prosecute any action or other proceeding in the name of another, without his or her consent and contrary to law, shall be guilty of a gross misdemeanor. [2011 c 336 § 317; 1909 c 249 § 124; RRS § 2376.]

Chapter 9.66 RCW NUISANCE

Sections

9.66.010	Public nuisance.
9.66.020	Unequal damage.
9.66.030	Maintaining or permitting nuisance.
9.66.040	Abatement of nuisance.
9.66.050	Deposit of unwholesome substance.

Cemeteries established illegally: RCW 68.56.040.

Furnishing impure water: RCW 70.54.020.

Malicious mischief—Injury to property: Chapters 9.61, 9A.48 RCW.

Mausoleums and columbariums constructed illegally: RCW 68.28.060.

Nuisances: Chapter 7.48 RCW.

Poisoning food or water: RCW 69.40.030.

Sexually transmitted disease control, penalty: RCW 70.24.080.

9.66.010 Public nuisance. A public nuisance is a crime against the order and economy of the state. Every place

(1) Wherein any fighting between people or animals or birds shall be conducted; or,

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2) Shall offend public decency; or,

(3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley, highway, or municipal transit vehicle or station; or,

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance. [1994 c 45 § 3; 1971 ex.s. c 280 § 22; 1909 c 249 § 248; 1895 c 14 § 1; Code 1881 § 1246; RRS § 2500.]

Findings—Declaration—Severability—1994 c 45: See notes following RCW 7.48.140.

Boxing and wrestling regulated: Chapter 67.08 RCW.

Devices simulating traffic control signs declared public nuisance: RCW 47.36.180.

Highway obstructions: Chapter 47.32 RCW.

Navigation, obstructing: Chapter 88.28 RCW.

Parimutuel betting on horse races permitted: RCW 67.16.060.

Additional notes found at www.leg.wa.gov

9.66.020 Unequal damage. An act which affects a considerable number of persons in any of the ways specified in RCW 9.66.010 is not less a public nuisance because the extent of the damage is unequal. [1909 c 249 § 249; Code 1881 § 1236; 1875 p 79 § 2; RRS § 2501.]

9.66.030 Maintaining or permitting nuisance. Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or boat, or portion thereof, knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance, shall be guilty of a misdemeanor. [1909 c 249 § 250; Code 1881 § 1248; 1875 p 81 § 14; RRS § 2502.]

9.66.040 Abatement of nuisance. Any court or magistrate before whom there may be pending any proceeding for a violation of RCW 9.66.030, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant: PROVIDED, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein. [1987 c 202 § 140; 1957 c 45 § 4; 1909 c 249 § 251; Code 1881 §§ 1244, 1245; 1875 p 80 §§ 10, 11; RRS § 2503.]

Intent—1987 c 202: See note following RCW 2.04.190.

Jurisdiction to abate a nuisance: State Constitution Art. 4 § 6 (Amendment 28).

9.66.050 Deposit of unwholesome substance. Every person who shall deposit, leave or keep, on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain or carry on, upon or near a highway or route of public travel, on land or water,

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any business, trade or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek or river, wholly or partly in this state, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. [1909 c 249 § 285; RRS § 2537.]

Discharging ballast: RCW 88.28.060.

Disposal of dead animals: Chapter 16.68 RCW.

Water pollution: Chapter 35.88 RCW, RCW 70.54.010 through 70.54.030, chapter 90.48 RCW.

Chapter 9.68 RCW OBSCENITY AND PORNOGRAPHY

Sections

9.68.015	Obscene literature, shows, etc.—Exemptions.
9.68.030	Indecent articles, etc.
9.68.050	"Erotic material"—Definitions.
9.68.060	"Erotic material"—Determination by court—Labeling—Penalties.
9.68.070	Prosecution for violation of RCW 9.68.060—Defense.
9.68.080	Unlawful acts.
9.68.090	Civil liability of wholesaler or wholesaler-distributor.
9.68.100	Exceptions to RCW 9.68.050 through 9.68.120.
9.68.110	Motion picture operator or projectionist exempt, when.
9.68.120	Provisions of RCW 9.68.050 through 9.68.120 exclusive.
9.68.130	"Sexually explicit material"—Defined—Unlawful display.
9.68.140	Promoting pornography—Class C felony—Penalties.
9.68.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Indictment or information, obscene literature: RCW 10.37.130.

Injunctions, obscene materials: Chapter 7.42 RCW.

Public indecency: Chapter 9A.88 RCW.

Telephone calls using obscene language: RCW 9.61.230 through 9.61.250.

9.68.015 Obscene literature, shows, etc.—Exemptions. Nothing in chapter 260, Laws of 1959 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 260 § 2.]

9.68.030 Indecent articles, etc. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. [1971 ex.s. c 185 § 2; 1909 c 249 § 208; RRS § 2460.]

9.68.050 "Erotic material"—Definitions. For the purposes of RCW 9.68.050 through 9.68.120:

(1) "Minor" means any person under the age of eighteen years;

(2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings. [1992 c 5 § 1; 1969 ex.s. c 256 § 13.]

Additional notes found at www.leg.wa.gov

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned for up to three hundred sixty-four days;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year. [2011 c 96 § 8; 2003 c 53 § 41; 1992 c 5 § 2; 1969 ex.s. c 256 § 14.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.68.070 Prosecution for violation of RCW 9.68.060—Defense. In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself or herself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation. [2011 c 336 § 318; 1992 c 5 § 4; 1969 ex.s. c 256 § 15.]

Additional notes found at www.leg.wa.gov

9.68.080 Unlawful acts. (1) It shall be unlawful for any minor to misrepresent his or her true age or his or her true status as the child, stepchild, or ward of a person accompanying him or her, for the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his or her true status as parent, spouse of a parent, or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050. [2011 c 336 § 319; 1969 ex.s. c 256 § 16.]

Additional notes found at www.leg.wa.gov

9.68.090 Civil liability of wholesaler or wholesaler-distributor. No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures, sound recordings, or other materials or subjected to loss of his or her franchise or right to deal or exhibit as a result of his or her attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's, or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler, or exhibitor for threefold the actual damages resulting from such withdrawal or attempted withdrawal. [2011 c 336 § 320; 1992 c 5 § 3; 1969 ex.s. c 256 § 17.]

Additional notes found at www.leg.wa.gov

9.68.100 Exceptions to RCW 9.68.050 through 9.68.120. Nothing in RCW 9.68.050 through 9.68.120 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1969 ex.s. c 256 § 18.]

Additional notes found at www.leg.wa.gov

9.68.110 Motion picture operator or projectionist exempt, when. The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his or her employment by a motion picture operator or projectionist employed by the owner or manager of a theatre or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theatre or place wherein he or she is so employed or unless he or she caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the manager or owner of the theatre or other place of showing. [2011 c 336 § 321; 1969 ex.s. c 256 § 19.]

Additional notes found at www.leg.wa.gov

9.68.120 Provisions of RCW 9.68.050 through 9.68.120 exclusive. The provisions of RCW 9.68.050 through 9.68.120 shall be exclusive. [1969 ex.s. c 256 § 20.]

Additional notes found at www.leg.wa.gov

9.68.130 "Sexually explicit material"—Defined—Unlawful display. (1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor. [2011 c 336 § 322; 1975 1st ex.s. c 156 § 1.]

9.68.140 Promoting pornography—Class C felony—Penalties. A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010 is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state. [1985 c 235 § 3; 1982 c 184 § 8.]

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Class C felony—Authorized sentence: RCW 9A.20.020.

Additional notes found at www.leg.wa.gov

9.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 19.]

Chapter 9.68A RCW SEXUAL EXPLOITATION OF CHILDREN (Formerly: Child pornography)

Sections

9.68A.001	Legislative findings, intent.
9.68A.005	Chapter not applicable to lawful conduct between spouses.
9.68A.011	Definitions.
9.68A.040	Sexual exploitation of a minor—Elements of crime—Penalty.
9.68A.050	Dealing in depictions of minor engaged in sexually explicit conduct.
9.68A.060	Sending, bringing into state depictions of minor engaged in sexually explicit conduct.
9.68A.070	Possession of depictions of minor engaged in sexually explicit conduct.
9.68A.075	Viewing depictions of a minor engaged in sexually explicit conduct.
9.68A.080	Reporting of depictions of minor engaged in sexually explicit conduct—Civil immunity.
9.68A.090	Communication with minor for immoral purposes—Penalties.
9.68A.100	Commercial sexual abuse of a minor—Penalties.
9.68A.101	Promoting commercial sexual abuse of a minor—Penalty.
9.68A.102	Promoting travel for commercial sexual abuse of a minor—Penalty.
9.68A.103	Permitting commercial sexual abuse of a minor—Penalty.
9.68A.104	Advertising commercial sexual abuse of a minor—Penalty.
9.68A.105	Additional fee assessment.
9.68A.110	Certain defenses barred, permitted.
9.68A.120	Seizure and forfeiture of property.
9.68A.130	Recovery of costs of suit by minor.
9.68A.150	Allowing minor on premises of live erotic performance—Definitions—Penalty.
9.68A.170	Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Restrictions on access.
9.68A.180	Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Sealing, storage, destruction of exhibits.
9.68A.190	Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Depictions distributed to defense counsel or expert witnesses prior to June 7, 2012—Distribution of depictions under color of law not a defense.
9.68A.910	Severability—1984 c 262.
9.68A.911	Severability—1989 c 32.
9.68A.912	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

9.68A.001 Legislative findings, intent. The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

The decisions of the Washington supreme court in *State v. Boyd*, 160 W.2d 424, 158 P.3d 54 (2007), and *State v. Grenning*, 169 Wn.2d 47, 234 P.3d 169 (2010), require prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct ("child pornography") as part of the discovery process in a criminal prosecution. The legislature finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:

(1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;

(2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;

(3) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse;

(4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;

(5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense. The legislature is also aware that the Adam Walsh child protection and safety act, P.L. 109-248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh act have found that such limitations can be employed while still providing the defendant due process. The legislature joins congress, and the legislatures of other states that have passed similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants. [2012 c 135 § 1; 2010 c 227 § 1; 2007 c 368 § 1; 1984 c 262 § 1.]

9.68A.005 Chapter not applicable to lawful conduct between spouses. This chapter does not apply to lawful conduct between spouses. [2010 c 227 § 2.]

9.68A.011 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

(2) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

(3) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(4) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadoomasochistic abuse;

(e) Defecation or urination for the purpose of sexual stimulation of the viewer;

(f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(5) "Minor" means any person under eighteen years of age.

(6) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration. [2010 c 227 § 3; 2002 c 70 § 1; 1989 c 32 § 1; 1984 c 262 § 2.]

9.68A.040 Sexual exploitation of a minor—Elements of crime—Penalty. (1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is a class B felony punishable under chapter 9A.20 RCW. [1989 c 32 § 2; 1984 c 262 § 3.]

9.68A.050 Dealing in depictions of minor engaged in sexually explicit conduct. (1)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

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(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense. [2010 c 227 § 4; 1989 c 32 § 3; 1984 c 262 § 4.]

9.68A.060 Sending, bringing into state depictions of minor engaged in sexually explicit conduct. (1)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense. [2010 c 227 § 5; 1989 c 32 § 4; 1984 c 262 § 5.]

9.68A.070 Possession of depictions of minor engaged in sexually explicit conduct. (1)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense. [2010 c 227 § 6; 2006 c 139 § 3; 1990 c 155 § 1; 1989 c 32 § 5; 1984 c 262 § 6.]

Additional notes found at www.leg.wa.gov

9.68A.075 Viewing depictions of a minor engaged in sexually explicit conduct. (1) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

(2) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the second degree, a class C felony punishable under chapter 9A.20 RCW.

(3) For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

(4) For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense. [2010 c 227 § 7.]

9.68A.080 Reporting of depictions of minor engaged in sexually explicit conduct—Civil immunity. (1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.

(3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report. [2002 c 70 § 2; 1989 c 32 § 6; 1984 c 262 § 7.]

9.68A.090 Communication with minor for immoral purposes—Penalties. (1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of an electronic communication. [2006 c 139 § 1. Prior: 2003 c 53 § 42; 2003 c 26 § 1; 1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.68A.100 Commercial sexual abuse of a minor—Penalties. (1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2010 c 289 § 13; 2007 c 368 § 2; 1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Additional requirements: RCW 9A.88.130.

Vehicle impoundment: RCW 9A.88.140.

9.68A.101 Promoting commercial sexual abuse of a minor—Penalty. (1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensa-

tion for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.

(e) A "patron" is a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2012 c 144 § 1; 2010 c 289 § 14; 2007 c 368 § 4.]

9.68A.102 Promoting travel for commercial sexual abuse of a minor—Penalty. (1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.

(3) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021. [2007 c 368 § 5.]

9.68A.103 Permitting commercial sexual abuse of a minor—Penalty. (1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2012 Ed.)

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor. [2007 c 368 § 7.]

9.68A.104 Advertising commercial sexual abuse of a minor—Penalty. (1) A person commits the offense of advertising commercial sexual abuse of a minor if he or she knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in the state of Washington and that includes the depiction of a minor.

(a) "Advertisement for a commercial sex act" means any advertisement or offer in electronic or print media, which includes either an explicit or implicit offer for a commercial sex act to occur in Washington.

(b) "Commercial sex act" means any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, for which something of value is given or received by any person.

(c) "Depiction" as used in this section means any photograph or visual or printed matter as defined in RCW 9.68A.011 (2) and (3).

(2) In a prosecution under this statute it is not a defense that the defendant did not know the age of the minor depicted in the advertisement. It is a defense, which the defendant must prove by a preponderance of the evidence, that the defendant made a reasonable bona fide attempt to ascertain the true age of the minor depicted in the advertisement by requiring, prior to publication, dissemination, or display of the advertisement, production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper of the minor depicted in the advertisement and did not rely solely on oral or written representations of the minor's age, or the apparent age of the minor as depicted. In order to invoke the defense, the defendant must produce for inspection by law enforcement a record of the identification used to verify the age of the person depicted in the advertisement.

(3) Advertising commercial sexual abuse of a minor is a class C felony. [2012 c 138 § 2.]

Findings—2012 c 138: "The legislature finds it unacceptable that Washington's children are being sold for sex in advertisements. A 2008 Seattle human services department report estimated that there are three hundred to five hundred children being exploited for sex in the Seattle area alone each year. The legislature finds that the practice of escort services advertising includes minors who are being sold for sex, a form of sex trafficking and commercial sexual abuse of minors. According to the Seattle police department, since the beginning of 2010, at least twenty-two children have been advertised online in the Seattle area for commercial sex and were recovered by the police department. The legislature is committed to eliminating sex trafficking of minors in a manner consistent with federal laws prohibiting sexual exploitation of children." [2012 c 138 § 1.]

Conflict with federal requirements—2012 c 138: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2012 c 138 § 3.]

9.68A.105 Additional fee assessment. (1)(a) In addition to penalties set forth in RCW 9.68A.100, 9.68A.101, and

9.68A.102, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.

(b) The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the person does not have the ability to pay in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation of RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance, the court shall assess the fee under (a) of this subsection. The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the minor does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(2) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(3) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2012 c 134 § 4; 2010 c 289 § 15; 2007 c 368 § 11; 1995 c 353 § 12.]

9.68A.110 Certain defenses barred, permitted. (1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100 through

9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

(6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

(7) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct. [2011 c 241 § 4. Prior: 2010 c 289 § 17; 2010 c 227 § 8; 2007 c 368 § 3; 1992 c 178 § 1; 1989 c 32 § 9; 1986 c 319 § 3; 1984 c 262 § 10.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

Additional notes found at www.leg.wa.gov

9.68A.120 Seizure and forfeiture of property. The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment

of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the state general fund and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law. [2009 c 479 § 12; 1999 c 143 § 8; 1984 c 262 § 11.]

Effective date—2009 c 479: See note following RCW 2.56.030.

9.68A.130 Recovery of costs of suit by minor. A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees. [1984 c 262 § 12.]

9.68A.150 Allowing minor on premises of live erotic performance—Definitions—Penalty. (1) No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material.

(2) Any person who is convicted of violating this section is guilty of a gross misdemeanor.

(3) For the purposes of this section:

(a) "Minor" means any person under the age of eighteen years.

(b) "Erotic materials" means live performance:

(i) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and

(ii) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

(iii) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.

(c) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.

(d) "Person" means any individual, partnership, firm, association, corporation, or other legal entity. [2003 c 53 § 43; 1987 c 396 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.68A.170 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Restrictions on access. (1) In any criminal proceeding, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall remain in the care, custody, and control of either a law enforcement agency or the court.

(2) Despite any request by the defendant or prosecution, any property or material that constitutes a depiction of a

minor engaged in sexually explicit conduct shall not be copied, photographed, duplicated, or otherwise reproduced, so long as the property or material is made reasonably available to the parties. Such property or material shall be deemed to be reasonably available to the parties if the prosecution, defense counsel, or any individual sought to be qualified to furnish expert testimony at trial has ample opportunity for inspection, viewing, and examination of the property or material at a law enforcement facility or a neutral facility approved by the court upon petition by the defense.

(3) The defendant may view and examine the property and materials only while in the presence of his or her attorney. If the defendant is proceeding pro se, the court will appoint an individual to supervise the defendant while he or she examines the materials.

(4) The court may direct that a mirror image of a computer hard drive containing such depictions be produced for use by an expert only upon a showing that an expert has been retained and is prepared to conduct a forensic examination while the mirror imaged hard drive remains in the care, custody, and control of a law enforcement agency or the court. Upon a substantial showing that the expert's analysis cannot be accomplished while the mirror imaged hard drive is kept within the care, custody, and control of a law enforcement agency or the court, the court may order its release to the expert for analysis for a limited time. If release is granted, the court shall issue a protective order setting forth such terms and conditions as are necessary to protect the rights of the victims, to document the chain of custody, and to protect physical evidence. [2012 c 135 § 2.]

9.68A.180 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Sealing, storage, destruction of exhibits. (1) Whenever a depiction of a minor engaged in sexually explicit conduct, regardless of its format, is marked as an exhibit in a criminal proceeding, the prosecutor shall seek an order sealing the exhibit at the close of the trial. Any exhibits sealed under this section shall be sealed with evidence tape in a manner that prevents access to, or viewing of, the depiction of a minor engaged in sexually explicit conduct and shall be labeled so as to identify its contents. Anyone seeking to view such an exhibit must obtain permission from the superior court after providing at least ten days notice to the prosecuting attorney. Appellate attorneys for the defendant and the state shall be given access to the exhibit, which must remain in the care and custody of either a law enforcement agency or the court. Any other person moving to view such an exhibit must demonstrate to the court that his or her reason for viewing the exhibit is of sufficient importance to justify another violation of the victim's privacy.

(2) Whenever the clerk of the court receives an exhibit of a depiction of a minor engaged in sexually explicit conduct, he or she shall store the exhibit in a secure location, such as a safe. The clerk may arrange for the transfer of such exhibits to a law enforcement agency evidence room for safekeeping provided the agency agrees not to destroy or dispose of the exhibits without an order of the court.

(3) If the criminal proceeding ends in a conviction, the clerk of the court shall destroy any exhibit containing a depiction of a minor engaged in sexually explicit conduct five

years after the judgment is final, as determined by the provisions of RCW 10.73.090(3). Before any destruction, the clerk shall contact the prosecuting attorney and verify that there is no collateral attack on the judgment pending in any court. If the criminal proceeding ends in a mistrial, the clerk shall either maintain the exhibit or return it to the law enforcement agency that investigated the criminal charges for safekeeping until the matter is set for retrial. If the criminal proceeding ends in an acquittal, the clerk shall return the exhibit to the law enforcement agency that investigated the criminal charges for either safekeeping or destruction. [2012 c 135 § 3.]

9.68A.190 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Depictions distributed to defense counsel or expert witnesses prior to June 7, 2012—Distribution of depictions under color of law not a defense. Any depiction of a minor engaged in sexually explicit conduct, in any format, distributed as discovery to defense counsel or an expert witness prior to June 7, 2012, shall either be returned to the law enforcement agency that investigated the criminal charges or destroyed, if the case is no longer pending in superior court. If the case is still pending, the depiction shall be returned to the superior court judge assigned to the case or the presiding judge. The court shall order either the destruction of the depiction or the safekeeping of the depiction if it will be used at trial.

It is not a defense to violations of this chapter for crimes committed after December 31, 2012, that the initial receipt of the depictions was done under the color of law through the discovery process. [2012 c 135 § 4.]

9.68A.910 Severability—1984 c 262. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 262 § 15.]

9.68A.911 Severability—1989 c 32. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 32 § 10.]

9.68A.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 20.]

(2012 Ed.)

Chapter 9.69 RCW DUTY OF WITNESSES

Sections

9.69.100 Duty of witness of offense against child or any violent offense—Penalty.

Labor and industries officer, disobeying subpoena to appear before: RCW 43.22.300.

Legislative hearings, failure to obey subpoena or testify: RCW 44.16.120 through 44.16.150.

Obstructing governmental operation: Chapter 9A.76 RCW.

Wills, fraudulently failing to deliver: RCW 11.20.010.

9.69.100 Duty of witness of offense against child or any violent offense—Penalty. (1) A person who witnesses the actual commission of:

(a) A violent offense as defined in RCW 9.94A.030 or preparations for the commission of such an offense;

(b) A sexual offense against a child or an attempt to commit such a sexual offense; or

(c) An assault of a child that appears reasonably likely to cause substantial bodily harm to the child, shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.

(2) This section shall not be construed to affect privileged relationships as provided by law.

(3) The duty to notify a person or agency under this section is met if a person notifies or attempts to provide such notice by telephone or any other means as soon as reasonably possible.

(4) Failure to report as required by subsection (1) of this section is a gross misdemeanor. However, a person is not required to report under this section where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm. [1987 c 503 § 18; 1985 c 443 § 21; 1970 ex.s. c 49 § 8.]

Abuse of children: Chapter 26.44 RCW.

Additional notes found at www.leg.wa.gov

Chapter 9.72 RCW PERJURY

Sections

9.72.090 Committal of witness—Detention of documents.

Banks and trust companies

false swearing in bank or trust company examinations: RCW 30.04.060.

knowingly subscribing to false statement: RCW 30.12.090.

Elections

falsification by voter: Chapter 29A.84 RCW.

initiative and referendum petition signer, false statement: RCW 29A.84.230.

recall petition signer, false statement: RCW 29A.84.240.

voting by mail, falsification of qualifications: RCW 29A.84.680.

Land registration falsification: RCW 65.12.740.

Marriage affidavit falsification: RCW 26.04.210.

Perjury and interference with official proceedings: Chapter 9A.72 RCW.

Public assistance, falsification of application: RCW 74.08.055.

Sufficiency of indictment or information charging perjury: RCW 10.37.140.

Taxation, false property listing: RCW 84.40.120.

9.72.090 Committal of witness—Detention of documents. Whenever it shall appear probable to a judge, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney. [1987 c 202 § 141; 1909 c 249 § 107; RRS § 2359.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 9.73 RCW PRIVACY, VIOLATING RIGHT OF

Sections

9.73.010	Divulging telegram.
9.73.020	Opening sealed letter.
9.73.030	Intercepting, recording, or divulging private communication—Consent required—Exceptions.
9.73.040	Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal.
9.73.050	Admissibility of intercepted communication in evidence.
9.73.060	Violating right of privacy—Civil action—Liability for damages.
9.73.070	Persons and activities excepted from chapter.
9.73.080	Penalties.
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9.73.230	Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties.
9.73.240	Intercepting, transmitting, or recording conversations concerning controlled substances—Concurrent power of attorney general to investigate and prosecute.
9.73.260	Pen registers, trap and trace devices.

9.73.010 Divulging telegram. Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger, or other employee of a telegraph company, and every clerk, operator, messenger, or other employee of such company who shall willfully divulge to any but the person for whom it was intended, any telegraphic message or dispatch intrusted to him or her for transmission or delivery, or the nature or contents thereof, or shall willfully refuse, neglect, or delay duly to transmit or deliver the same, shall be guilty

of a misdemeanor. [2011 c 336 § 323; 1909 c 249 § 410; Code 1881 § 2342; RRS § 2662.]

Intercepting, delaying telegram: RCW 9A.48.070, 9A.48.080.

9.73.020 Opening sealed letter. Every person who shall wilfully open or read, or cause to be opened or read, any sealed message, letter or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. [1909 c 249 § 411; RRS § 2663.]

9.73.030 Intercepting, recording, or divulging private communication—Consent required—Exceptions.

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person as defined in RCW 70.85.100, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

(4) An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full-time or contractual or part-time basis, shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers. Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the com-

munication or conversation. [1986 c 38 § 1; 1985 c 260 § 2; 1977 ex.s. c 363 § 1; 1967 ex.s. c 93 § 1.]

Reviser's note: This section was amended by 1985 c 260 § 2 and by 1986 c 38 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

9.73.040 Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal. (1) An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:

(a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that arson is about to be committed, or that a riot is about to be committed, and

(b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and

(c) There are no other means readily available for obtaining such information.

(2) Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(3) The applicant must state whether any prior application has been made to obtain such communications on the same instrument or for the same person and if such prior application exists the applicant shall disclose the current status thereof.

(4) The application and any order issued under RCW 9.73.030 through 9.73.080 shall identify as fully as possible the particular equipment, lines or location from which the information is to be obtained and the purpose thereof.

(5) The court may examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(6) Orders issued under this section shall be effective for fifteen days, after which period the court which issued the order may upon application of the officer who secured the original order renew or continue the order for an additional period not to exceed fifteen days.

(7) No order issued under this section shall authorize or purport to authorize any activity which would violate any laws of the United States. [1967 ex.s. c 93 § 2.]

Additional notes found at www.leg.wa.gov

9.73.050 Admissibility of intercepted communication in evidence. Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except with the permission of the person whose rights have been violated in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080, or in a criminal action in which the defendant is charged with a

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crime, the commission of which would jeopardize national security. [1967 ex.s. c 93 § 3.]

Additional notes found at www.leg.wa.gov

9.73.060 Violating right of privacy—Civil action—Liability for damages. Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his or her business, his or her person, or his or her reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him or her on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation. [2011 c 336 § 324; 1977 ex.s. c 363 § 2; 1967 ex.s. c 93 § 4.]

Additional notes found at www.leg.wa.gov

9.73.070 Persons and activities excepted from chapter. (1) The provisions of this chapter shall not apply to any activity in connection with services provided by a common carrier pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission and any activity of any officer, agent or employee of a common carrier who performs any act otherwise prohibited by this law in the construction, maintenance, repair and operations of the common carrier's communications services, facilities, or equipment or incident to the use of such services, facilities or equipment. Common carrier as used in this section means any person engaged as a common carrier or public service company for hire in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy.

(2) The provisions of this chapter shall not apply to:

(a) Any common carrier automatic number, caller, or location identification service that has been approved by the Washington utilities and transportation commission; or

(b) A 911 or enhanced 911 emergency service as defined in RCW 82.14B.020, for purposes of aiding public health or public safety agencies to respond to calls placed for emergency assistance. [1994 c 49 § 1. Prior: 1991 c 329 § 8; 1991 c 312 § 1; 1967 ex.s. c 93 § 5.]

Additional notes found at www.leg.wa.gov

9.73.080 Penalties. (1) Except as otherwise provided in this chapter, any person who violates RCW 9.73.030 is guilty of a gross misdemeanor.

(2) Any person who knowingly alters, erases, or wrongfully discloses any recording in violation of RCW 9.73.090(1)(c) is guilty of a gross misdemeanor. [2000 c 195 § 3; 1989 c 271 § 209; 1967 ex.s. c 93 § 6.]

Intent—2000 c 195: See note following RCW 9.73.090.

Additional notes found at www.leg.wa.gov

9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility. (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency

communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him or her shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities;

(c) Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device that makes a recording pursuant to this subsection (1)(c) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device may be intentionally turned off by the law enforcement officer during the recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode.

No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magis-

trate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days. [2011 c 336 § 325; 2006 c 38 § 1; 2000 c 195 § 2; 1989 c 271 § 205; 1986 c 38 § 2; 1977 ex.s. c 363 § 3; 1970 ex.s. c 48 § 1.]

Intent—2000 c 195: "The legislature intends, by the enactment of this act, to provide a very limited exception to the restrictions on disclosure of intercepted communications." [2000 c 195 § 1.]

Additional notes found at www.leg.wa.gov

9.73.095 Intercepting, recording, or divulging offender conversations—Conditions—Notice. (1) RCW 9.73.030 through 9.73.080 and 9.73.260 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2)(a) All personal calls made by offenders shall be made using a calling system approved by the secretary of corrections which is at least as secure as the system it replaces. In approving one or more calling systems, the secretary of corrections shall consider the safety of the public, the ability to reduce telephone fraud, and the ability of offender families to select a low-cost option.

(b) The calls shall be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison offender, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility as provided for by this section. The department shall also adhere to the following procedures and restrictions when intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present:

(a) Unless otherwise provided for in this section, after intercepting or recording any conversation, only the superintendent and his or her designee shall have access to that recording.

(b) The contents of any intercepted and recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(c) All conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an offender or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all offenders, residents, and personnel of state correctional facilities that

their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

(6) The department shall notify all visitors to state correctional facilities who may enter offender living units, cells, rooms, dormitories, or common spaces where offenders may be present, that their conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section. The notice required under this subsection shall be accomplished through a means no less conspicuous than a general posting in a location likely to be seen by visitors entering the facility. [2004 c 13 § 2; 1998 c 217 § 2; 1996 c 197 § 1; 1989 c 271 § 210.]

Findings—Intent—2004 c 13: "The legislature finds that the current telephone service for offender calls from department of corrections facilities is based on outdated technology that provides neither the most secure nor the most accountable system available and is provided at a high cost to the offenders' families. The legislature, in budget provisions, has required the secretary of corrections to investigate other systems as offender telephone service contracts came due for renewal. The legislature now finds that the current statute prevents the secretary of corrections from using systems that provide greater security, more offender accountability, and lower costs. Therefore, the legislature intends to remove this barrier while retaining the intent of the statute to provide safe, accountable, and affordable telephone services." [2004 c 13 § 1.]

Local government reimbursement claims: RCW 4.92.280.

Additional notes found at www.leg.wa.gov

9.73.100 Recordings available to defense counsel. Video and/or sound recordings obtained by police personnel under the authority of RCW 9.73.090 and 9.73.100 shall be made available for hearing and/or viewing by defense counsel at the request of defense counsel whenever a criminal charge has been filed against the subject of the video and/or sound recordings. [1970 ex.s. c 48 § 2.]

Additional notes found at www.leg.wa.gov

9.73.110 Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions. It shall not be unlawful for the owner or person entitled to use and possession of a building, as defined in RCW 9A.04.110(5), or the agent of such person, to intercept, record, or disclose communications or conversations which occur within such building if the persons engaged in such communication or conversation are engaged in a criminal act at the time of such communication or conversation by virtue of unlawful entry or remaining unlawfully in such building. [1977 ex.s. c 363 § 4.]

9.73.120 Reports—Required, when, contents. (1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

(a) An authorization, extension or renewal was applied for;

(b) The kind of authorization applied for;

(c) The authorization was granted as applied for, was modified, or was denied;

(d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;

(e) The offense specified in the authorization or extension or renewal of authorization;

(f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made;

(g) Whether an arrest resulted from the communication which was the subject of the authorization; and

(h) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports made under this subsection must include information on authorizations for the installation and use of pen registers and trap and trace devices under RCW 9.73.260. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the communications or conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require, except that the administrator for the courts shall not require the reporting of information that might lead to the disclosure of the identity of a confidential informant.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as appropriate including any recommendations as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights. [1998 c 217 § 3; 1989 c 271 § 207; 1977 ex.s. c 363 § 5.]

Local government reimbursement claims: RCW 4.92.280.

Additional notes found at www.leg.wa.gov

9.73.130 Recording private communications—Authorization—Application for, contents. Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

(1) The authority of the applicant to make such application;

(2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is sought and the identity of whoever authorized the application;

(3) A particular statement of the facts relied upon by the applicant to justify his or her belief that an authorization should be issued, including:

(a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;

(b) The details as to the particular offense that has been, is being, or is about to be committed;

(c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated on the

wire communication facility involved or at the particular place where the oral communication is to be recorded;

(d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;

(e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require. [2011 c 336 § 326; 1977 ex.s. c 363 § 6.]

9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders. Within a reasonable time but not later than thirty days after the termination of the period of the authorization or of extensions or renewals thereof, or the date of the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended, the issuing authority shall cause to be served on the person named in the authorization or application for an authorization, and such other parties to the recorded communications as the judge may in his or her discretion determine to be in the interest of justice, an inventory which shall include:

(1) Notice of the entry of the authorization or the application for an authorization which has been denied under RCW 9.73.090 as now or hereafter amended;

(2) The date of the entry of the authorization or the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended;

(3) The period of authorized or disapproved recording; and

(4) The fact that during the period wire or oral communications were or were not recorded.

The issuing authority, upon the filing of a motion, may in its discretion make available to such person or his or her attorney for inspection such portions of the recorded communications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good

cause to the court the serving of the inventory required by this section may be postponed or dispensed with. [2011 c 336 § 327; 1977 ex.s. c 363 § 7.]

9.73.200 Intercepting, transmitting, or recording conversations concerning controlled substances—Findings.

The legislature finds that the unlawful manufacturing, selling, and distributing of controlled substances is becoming increasingly prevalent and violent. Attempts by law enforcement officers to prevent the manufacture, sale, and distribution of drugs is resulting in numerous life-threatening situations since drug dealers are using sophisticated weapons and modern technological devices to deter the efforts of law enforcement officials to enforce the controlled substance statutes. Dealers of unlawful drugs are employing a wide variety of violent methods to realize the enormous profits of the drug trade.

Therefore, the legislature finds that conversations regarding illegal drug operations should be intercepted, transmitted, and recorded in certain circumstances without prior judicial approval in order to protect the life and safety of law enforcement personnel and to enhance prosecution of drug offenses, and that that interception and transmission can be done without violating the constitutional guarantees of privacy. [1989 c 271 § 201.]

Additional notes found at www.leg.wa.gov

9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Authorization—Monthly report—Admissibility—Destruction of information.

(1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning:

(a) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(b) Person(s) engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the

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date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4)(b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation. [2011 c 241 § 3; 1989 c 271 § 202.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

Additional notes found at www.leg.wa.gov

9.73.220 Judicial authorizations—Availability of judge required.

In each superior court judicial district in a county with a population of two hundred ten thousand or more there shall be available twenty-four hours a day at least one superior court or district court judge or magistrate designated to receive telephonic requests for authorizations that may be issued pursuant to this chapter. The presiding judge of each such superior court in conjunction with the district court judges in that superior court judicial district shall establish a coordinated schedule of rotation for all of the superior and district court judges and magistrates in the superior court judicial district for purposes of ensuring the availability of at least one judge or magistrate at all times. During the period that each judge or magistrate is designated, he or she shall be equipped with an electronic paging device when not present at his or her usual telephone. It shall be the designated judge's or magistrate's responsibility to ensure that all attempts to reach him or her for purposes of requesting authorization pursuant to this chapter are forwarded to the electronic page number when the judge or magistrate leaves the place where he or she would normally receive such calls. [1991 c 363 § 9; 1989 c 271 § 203.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties. (1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves:

(i) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(ii) A party engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by

the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization and shall make a determination whether the requirements of subsection (1) of this section were met. Evidence obtained as a result of the interception, transmission, or recording need not be submitted to the court. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section provided that, if the confidential informant was a minor at the time of the recording or an alleged victim of commercial child sexual abuse under RCW 9.68A.100 through 9.68A.102 or 9[A].40.100, no such notice shall be given.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the administrative office of the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section. [2011 c 241 § 2; 2005 c 282 § 17; 1989 c 271 § 204.]

Findings—2011 c 241: "The legislature finds increasing incidents of commercial sexual exploitation of children in our state, and further protection of victims require giving law enforcement agencies the tool to have a unified victim-centered police investigation approach to further protect victims by ensuring their safety by prosecuting traffickers. The one-party consent provision permitted for drug trafficking investigation passed in the comprehensive bill to facilitate police investigation and prosecution of drug trafficking crimes is a helpful tool to this end. The legislature also finds that exceptions should be allowed for minors employed for investigation when the minor is a victim and involves only electronic communication with the defendant." [2011 c 241 § 1.]

Effective date—2011 c 241: "This act takes effect August 1, 2011." [2011 c 241 § 5.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

9.73.240 Intercepting, transmitting, or recording conversations concerning controlled substances—Concurrent power of attorney general to investigate and prosecute. (1) The attorney general shall have concurrent authority and power with the prosecuting attorneys to investigate violations of RCW 9.73.200 through 9.73.230 or RCW 9.73.090 and initiate and conduct prosecutions of any violations upon request of any of the following:

(a) The person who was the nonconsenting party to the intercepted, transmitted, or recorded conversation or communication; or

(b) The county prosecuting attorney of the jurisdiction in which the offense has occurred.

(2) The request shall be communicated in writing to the attorney general. [1989 c 271 § 206.]

Additional notes found at www.leg.wa.gov

9.73.260 Pen registers, trap and trace devices. (1) As used in this section:

(a) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications, and such term includes any electronic storage of such communication.

(b) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:

(i) Any wire or oral communication;

(ii) Any communication made through a tone-only paging device; or

(iii) Any communication from a tracking device.

(c) "Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications.

(d) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(e) "Trap and trace device" means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(2) No person may install or use a pen register or trap and trace device without a prior court order issued under this section except as provided under subsection (6) of this section or RCW 9.73.070.

(3) A law enforcement officer may apply for and the superior court may issue orders and extensions of orders

authorizing the installation and use of pen registers and trap and trace devices as provided in this section. The application shall be under oath and shall include the identity of the officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant must certify that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(4) If the court finds that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation and finds that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed, or will lead to learning the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device. The order shall specify:

(a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(b) The identity, if known, of the person who is the subject of the criminal investigation;

(c) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

(d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device. An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. An extension of the original order may only be granted upon: A new application for an order under subsection (3) of this section; and a showing that there is a probability that the information or items sought under this subsection are more likely to be obtained under the extension than under the original order. No extension beyond the first extension shall be granted unless: There is a showing that there is a high probability that the information or items sought under this subsection are much more likely to be obtained under the second or subsequent extension than under the original order; and there are extraordinary circumstances such as a direct and immediate danger of death or serious bodily injury to a law enforcement officer. The period of extension shall be for a period not to exceed sixty days.

An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the court and that the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace

device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court.

(5) Upon the presentation of an order, entered under subsection (4) of this section, by an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in subsection (4) of this section.

Upon the request of an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in subsection (4) of this section. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this subsection shall be reasonably compensated by the law enforcement agency that requests the facilities or assistance for such reasonable expenses incurred in providing such facilities and assistance.

No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this section. A good faith reliance on a court order under this section, a request pursuant to this section, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

(6)(a) Notwithstanding any other provision of this chapter, a law enforcement officer and a prosecuting attorney or deputy prosecuting attorney who jointly and reasonably determine that there is probable cause to believe that an emergency situation exists that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained, and there are grounds upon which an order could be entered under this chapter to authorize such installation and use, may have installed and use a pen register or trap and trace device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accor-

dance with subsection (4) of this section. In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier. If an order approving the installation or use is not obtained within forty-eight hours, any information obtained is not admissible as evidence in any legal proceeding. The knowing installation or use by any law enforcement officer of a pen register or trap and trace device pursuant to this subsection without application for the authorizing order within forty-eight hours of the installation shall constitute a violation of this chapter and be punishable as a gross misdemeanor. A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this subsection shall be reasonably compensated by the law enforcement agency that requests the facilities or assistance for such reasonable expenses incurred in providing such facilities and assistance.

(b) A law enforcement agency that authorizes the installation of a pen register or trap and trace device under this subsection (6) shall file a monthly report with the administrator for the courts. The report shall indicate the number of authorizations made, the date and time of each authorization, whether a court authorization was sought within forty-eight hours, and whether a subsequent court authorization was granted. [1998 c 217 § 1.]

Local government reimbursement claims: RCW 4.92.280.

Chapter 9.81 RCW SUBVERSIVE ACTIVITIES

Sections

9.81.010	Definitions.
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9.81.030	Membership in subversive organization is felony—Penalty.
9.81.040	Disqualification from voting or holding public office.
9.81.050	Dissolution of subversive organizations—Disposition of property.
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9.81.070	Public employment—Determining eligibility—Inquiries—Oath.
9.81.080	Public employment—Inquiries may be dispensed with, when.
9.81.082	Membership in subversive organization described.
9.81.083	Communist party declared a subversive organization.
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9.81.110	Misstatements are punishable as perjury—Penalty.
9.81.120	Constitutional rights—Censorship or infringement.

Anarchy and sabotage: Chapter 9.05 RCW.

Freedom of speech: State Constitution Art. 1 § 5.

Treason: State Constitution Art. 1 § 27; chapter 9.82 RCW.

9.81.010 Definitions. (1) "Organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

(2) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the

constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, by revolution, force or violence.

(3) "Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(4) "Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

(5) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or any political subdivision of either of them by revolution, force, or violence; or who with knowledge that the organization is an organization as described in subsections (2) and (3) hereof, becomes or remains a member of a subversive organization or a foreign subversive organization. [1953 c 142 § 1; 1951 c 254 § 1.]

Additional notes found at www.leg.wa.gov

9.81.020 Subversive activities made felony—Penalty.

(1) It is a class B felony for any person knowingly and willfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of Washington or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing the organization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing the organization to be such.

(2) Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court. [2003 c 53 § 44; 1951 c 254 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.81.030 Membership in subversive organization is felony—Penalty. It is a class C felony for any person after June 1, 1951, to become, or after September 1, 1951, to remain a member of a subversive organization or a foreign subversive organization knowing the organization to be a subversive organization or foreign subversive organization. Any person upon a plea of guilty or upon conviction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court. [2003 c 53 § 45; 1951 c 254 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.81.040 Disqualification from voting or holding public office. Any person who shall be convicted or shall plead guilty of violating any of the provisions of RCW 9.81.020 and 9.81.030, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(1) Holding any office, elective or appointive, or any other position of profit or trust in, or employment by the government of the state of Washington or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(2) Filing or standing for election to any public office in the state of Washington; or

(3) Voting in any election held in this state. [1951 c 254 § 4.]

9.81.050 Dissolution of subversive organizations—Disposition of property. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of Washington and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Washington a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of Washington, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of Washington. [1951 c 254 § 5.]

9.81.060 Public employment—Subversive person ineligible. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government, or in the administration of the business, of this state, or of any

county, municipality, or other political subdivision of this state. [1951 c 254 § 11.]

9.81.070 Public employment—Determining eligibility—Inquiries—Oath. Every person and every board, commission, council, department, court or other agency of the state of Washington or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain whether any person is a subversive person. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury. Every such person, board, commission, council, department, court, or other agency shall require every employee or applicant for employment to state under oath whether or not he or she is a member of the Communist party or other subversive organization, and refusal to answer on any grounds shall be cause for immediate termination of such employee's employment or for refusal to accept his or her application for employment. [1955 c 377 § 1; 1951 c 254 § 12.]

Application forms, licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Discrimination in employment: Chapter 49.60 RCW.

9.81.080 Public employment—Inquiries may be dispensed with, when. The inquiries prescribed in preceding sections, other than the written statement to be executed by an applicant for employment and the requirement set forth in RCW 9.81.070, relative to membership in the communist party or other subversive organization, shall not be required as a prerequisite to the employment of any persons in any case in which the employing authority may determine, and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of such persons will not be dangerous to the health of the citizens or the security of the governments of the United States, the state of Washington, or any political subdivision thereof. [1955 c 377 § 2; 1951 c 254 § 13.]

9.81.082 Membership in subversive organization described. For the purpose of *this act, membership in a subversive organization shall be membership in any organization after it has been placed on the list of organizations designated by the attorney general of the United States as being subversive pursuant to executive order No. 9835. [1955 c 377 § 3.]

***Reviser's note:** The term "this act" as used in RCW 9.81.082 appeared in 1955 c 377 § 3 which did not contain any language incorporating it as part of 1951 c 254 nor as part of chapter 9.81 RCW.

9.81.083 Communist party declared a subversive organization. The Communist party is a subversive organization within the purview of chapter 9.81 RCW and membership in the Communist party is a subversive activity thereunder. [1955 c 377 § 4.]

9.81.090 Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The attorney general and the personnel director, and the civil service commission of any county, city, or other political subdivision of this state, shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall have the right of reasonable notice, date, time, and place of hearing, opportunity to be heard by himself or herself and witnesses on his or her behalf, to be represented by counsel, to be confronted by witnesses against him or her, the right to cross-examination, and such other rights which are in accordance with the procedures prescribed by law for the discharge of such person for other reasons. Every person and every board, commission, council, department, or other agency of the state of Washington or any political subdivision thereof having responsibility for the appointment, employment, or supervision of public employees not covered by the classified service in this section referred to, shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter, shall promptly report to the special assistant attorney general in charge of subversive activities the fact of and the circumstances surrounding such discharge. Any person discharged under the provisions of this chapter shall have the right within thirty days thereafter to appeal to the superior court of the county wherein said person may reside or wherein he or she may have been employed for determination by said court as to whether or not the discharge appealed from was justified under the provisions of this chapter. The court shall regularly hear and determine such appeals and the decision of the superior court may be appealed to the supreme court or the court of appeals of the state of Washington as in civil cases. Any person appealing to the superior court may be entitled to trial by jury if he or she so elects. [2011 c 336 § 328; 1971 c 81 § 44; 1951 c 254 § 15.]

9.81.110 Misstatements are punishable as perjury—Penalty. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee, shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who wilfully makes a material misstatement of fact (1) in any such written statement, or (2) in any affidavit made pursuant to the provisions of this chapter, or (3) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions pursuant to this chapter, or (4) in any written statement by an applicant for appointment or employment or by an employee in any state aid or private institution of learning in this state, intended to determine whether or not such applicant or employee is a

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subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury, shall be subject to the penalties of perjury, as prescribed in chapter 9.41 RCW. [1951 c 254 § 17.]

9.81.120 Constitutional rights—Censorship or infringement. Nothing in this chapter shall be construed to authorize, require or establish any military or civilian censorship or in any way to limit or infringe upon freedom of the press or freedom of speech or assembly within the meaning and the manner as guaranteed by the Constitution of the United States or of the state of Washington and no regulation shall be promulgated hereunder having that effect. [1951 c 254 § 19.]

Chapter 9.82 RCW TREASON

Sections

9.82.010	Defined—Penalty.
9.82.020	Levying war.
9.82.030	Misprision of treason.

Anarchy and sabotage: Chapter 9.05 RCW.

Subversive activities: Chapter 9.81 RCW.

9.82.010 Defined—Penalty. (1) Treason against the people of the state consists in—

- (a) Levying war against the people of the state, or
- (b) Adhering to its enemies, or
- (c) Giving them aid and comfort.

(2) Treason is a class A felony and punishable by death.

(3) No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. [2003 c 53 § 46; 1909 c 249 § 65; RRS § 2317.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Treason defined and evidence required: State Constitution Art. 1 § 27.

9.82.020 Levying war. To constitute levying war against the state an actual act of war must be committed. To conspire to levy war is not enough. When persons arise in insurrection with intent to prevent, in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war. [1909 c 249 § 66; RRS § 2318.]

9.82.030 Misprision of treason. Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a justice of the supreme court or a judge of either the court of appeals or the superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for not more than five years or in a county jail for up to three hundred sixty-four days. [2011 c 96 § 9; 1992 c 7 § 16; 1971 c 81 § 45; 1909 c 249 § 67; RRS § 2319.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 9.86 RCW
FLAGS, CRIMES RELATING TO

Sections

9.86.010	"Flag," etc., defined.
9.86.020	Improper use of flag prohibited.
9.86.030	Desecration of flag.
9.86.040	Application of provisions.

Display of flags: RCW 1.20.015.

Flag exercises in schools: RCW 28A.230.140.

State flag: RCW 1.20.010.

9.86.010 "Flag," etc., defined. The words flag, standard, color, ensign or shield, as used in this chapter, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof. [1919 c 107 § 1; RRS § 2675-1.]

9.86.020 Improper use of flag prohibited. (1) No person shall, in any manner, for exhibition or display:

(a) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

(b) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(c) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 47; 1919 c 107 § 2; 1909 c 249 § 423; 1901 c 154 § 1; RRS § 2675-2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.86.030 Desecration of flag. (1) No person shall knowingly cast contempt upon any flag, standard, color, ensign or shield, as defined in RCW 9.86.010, by publicly mutilating, defacing, defiling, burning, or trampling upon the flag, standard, color, ensign or shield.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 48; 1969 ex.s. c 110 § 1; 1919 c 107 § 3; 1909 c 249 § 423; RRS § 2675-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.86.040 Application of provisions. This chapter shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States army and navy regulations, nor shall it apply to any printed or written docu-

ment or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. [1919 c 107 § 4; RRS § 2675-4.]

Chapter 9.91 RCW
MISCELLANEOUS CRIMES

Sections

9.91.010	Denial of civil rights—Terms defined.
9.91.020	Operating railroad, steamboat, vehicle, etc., while intoxicated.
9.91.025	Unlawful transit conduct.
9.91.060	Leaving children unattended in parked automobile.
9.91.130	Disposal of trash in charity donation receptacle.
9.91.140	Food stamps—Unlawful sale.
9.91.142	Food stamps—Trafficking.
9.91.144	Food stamps—Unlawful redemption.
9.91.150	Tree spiking.
9.91.155	Tree spiking—Action for damages.
9.91.160	Personal protection spray devices.
9.91.170	Interfering with dog guide or service animal.
9.91.175	Interfering with search and rescue dog.
9.91.180	Violent video or computer games.

Accountancy practice laws, penalty: RCW 18.04.370.

Aeronautics laws and rules, penalty: RCW 47.68.240.

Agriculture

agricultural enabling act, penalties: RCW 15.66.210.

apple advertising laws and rules, penalty: RCW 15.24.200.

farm labor contractors, violations, penalty: RCW 19.30.150.

fertilizers, minerals, and limes, penalty: RCW 15.54.470.

honey, penalty for violation of law regulating: RCW 69.28.180, 69.28.185.

horticultural plants and certification act, prohibited acts: Chapter 15.13 RCW.

marketing act, penalties: RCW 15.66.210.

peaches, standards of grades and packs, inspections, penalty for violations: RCW 15.17.290.

soft tree fruits, penalty: RCW 15.28.270.

standards of grades and packs, penalties: Chapter 15.17 RCW.

Aircraft and airman licensing violations: RCW 14.16.060.

Airport zoning violations: RCW 14.12.210.

Alcoholic beverages, violations and penalties: Chapter 66.44 RCW.

All-terrain vehicles

additional violations, penalty: RCW 46.09.480.

operating violations, penalty: RCW 46.09.470, 46.09.490.

Ambulances and drivers, first aid requirements, penalty: RCW 70.54.060, 70.54.065.

Animals: Title 16 RCW.

Antitrust, consumer protection: Chapter 19.86 RCW.

Architects licensing laws, penalty: RCW 18.08.460.

Auctioneering, county licensing laws, penalty: RCW 36.71.070.

Ballots (see also Elections)

counterfeiting or unlawful possession, penalty: RCW 29A.84.540.

divulging ballot count, penalty: RCW 29A.84.730.

tampering with, penalty: RCW 29A.84.420.

unlawful printing or distribution of official ballots, penalty: RCW 29A.84.410.

Banks and trust companies

advertising legal services, penalty: RCW 30.04.260.

certification of checks, penalty for violation of regulations: RCW 30.16.010.

commission, etc., to officer or employee to procure loan prohibited, penalty: RCW 30.12.110.

companies, commingling trust property, penalty: RCW 30.04.240.

examinations, penalty for falsification: RCW 30.04.060.

false entries or statements, penalty: RCW 30.12.090.

general penalties for violation of laws concerning: RCW 30.12.190.

general penalty for violation of rules and regulations: RCW 30.04.050.

holding companies regulations, penalty: RCW 30.04.230.

loans from trust funds prohibited, penalty: RCW 30.12.120.

- preferential transfers in contemplation of insolvency, penalty:* RCW 30.44.110.
receiving deposits when insolvent prohibited, penalty: RCW 30.44.120.
records, destroying or secreting, penalty: RCW 30.12.100.
unlawful use of words indicating, penalty: RCW 30.04.020.
- Barbering licensing regulations, penalty:* RCW 18.16.210.
- Baseball**
minors, penalty for violations concerning: RCW 67.04.150.
penalties for bribery or fraud concerning: RCW 67.04.010, 67.04.020, 67.04.050.
- Beauty culture licensing laws, penalty:* RCW 18.16.210.
- Bicycles, bicycle paths, operation of vehicles on prohibited:* RCW 35.75.020.
- Bids on state purchases, interfering with:* RCW 43.19.1939.
- Birth centers licensing, penalty for unlicensed operation:* RCW 18.46.120.
- Blind made products, false advertising:* RCW 19.06.030, 19.06.040.
- Boarding homes' licensing act, violations of:* Chapter 18.20 RCW.
- Bodies (see Human remains)*
- Boilers or unfired pressure vessels, inspection certificate required, penalty:* RCW 70.79.320.
- Bonds issued by state, etc., fraud of engraver, penalty:* RCW 39.44.101.
- Boxing, wrestling, and martial arts, penalties for violations of provisions relating to:* RCW 67.08.130, 67.08.140, 67.08.150.
- Brands and marks on animals, obliteration, etc., penalty:* RCW 16.57.120, 16.57.320, 16.57.360.
- Building permit, issuance to person not complying with industrial insurance payroll estimate requirement:* RCW 51.12.070.
- Buildings, public**
doors, safety requirements, penalty: RCW 70.54.070.
earthquake standards for construction, penalty: RCW 70.86.040.
- Capitol grounds traffic regulations, penalty for violations:* RCW 46.08.170.
- Caustic poisons act, penalty for violation:* RCW 69.36.060.
- Cemeteries**
embalmers and funeral director laws, penalty: RCW 18.39.220.
endowment care cemeteries, penalties: RCW 68.40.085, 68.40.090.
establishment in violation of laws regulating, penalty: RCW 68.56.040.
mausoleums and columbariums, penalty for violation of construction laws: RCW 68.28.060.
property, penalties for violations concerning: RCW 68.24.130, 68.24.140, 68.24.150, 68.24.190, 68.56.010.
- Charitable trusts, penalty for violations:* RCW 11.110.140.
- Children (see Minors)*
- Chiropractic licensing laws, penalty:* RCW 18.25.090.
- Cities and towns**
budgets in cities over 300,000, penalty for violation of regulations: RCW 35.32A.090.
cities of the first class, powers to prescribe crimes by ordinance: RCW 35.22.280.
cities of the second class, powers to prescribe penalties for violation of ordinances: RCW 35.23.440.
city firefighters, city police, civil service provisions, penalty for violations: RCW 41.08.210.
commission form, free services to officers and employees prohibited, penalty: RCW 35.17.150.
operation of vehicles, etc., on bicycle paths prohibited, penalty: RCW 35.75.020.
pollution of water supply, penalty: RCW 35.88.040.
towns, power to prescribe penalties for violation of ordinances: RCW 35.27.370.
unclassified cities, powers to prescribe penalties for violation of ordinances: RCW 35.30.010.
- Civil defense, enforcement of orders, rules, and regulations, penalty:* RCW 38.52.150.
- Civil service for sheriff's office employees, penalty:* RCW 41.14.220.
- Collection agency and out-of-state collection agency laws, penalty:* RCW 19.16.430, 19.16.450.
- Colleges**
interfering by force or violence with any administrator, faculty member or student unlawful—Penalty: RCW 28B.10.570, 28B.10.572.
intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty: RCW 28B.10.571 and 28B.10.572.
- Commercial feed law, crimes against:* Chapter 15.53 RCW.
- Commercial sprayers and dusters, violations, penalty:* Chapter 17.21 RCW.
- Commission merchants, violations, penalty:* RCW 20.01.460.
- Consumer protection, crimes and penalties relating to:* Chapter 19.86 RCW.
- Control of pet animals infested with diseases communicable to humans, violation, penalty:* RCW 16.70.050.
- Controlled atmosphere storage, penalty:* RCW 15.30.250.
- Controlled substances:* Chapter 69.50 RCW.
- Conveyances, fraudulent:* Chapter 19.40 RCW.
- Cosmetology laws, penalty:* RCW 18.16.210.
- Counties**
budget laws, penalty for violation: RCW 36.40.240.
building codes and fire regulations, penalty for violation: RCW 36.43.040.
dog license tax violation, penalty: RCW 36.49.070.
garbage disposal regulations, penalty for violations: RCW 36.58.020.
hawkers and auctioneers, penalty for selling without license: RCW 36.71.060.
officers failing to pay over fees, penalty: RCW 36.18.170.
officers taking illegal fees, penalty: RCW 36.18.160.
parks, playgrounds, or other recreational facilities, violation of rules and regulations adopted by county commissioners, penalty: RCW 36.68.080.
roads and bridges
general penalty for violation of provisions concerning: RCW 36.75.290.
use of oil or other material restricted, penalty: RCW 36.86.060.
trading stamp licenses, penalty: RCW 19.83.050.
violation of regulations for taking of census for classification of counties: RCW 36.13.070.
- Credit unions:* Chapter 31.12 RCW.
- Cruelty to animals, penalties:* Chapter 16.52 RCW.
- Dental hygienist licensing laws, penalties:* RCW 18.29.100.
- Dentistry practice laws, penalties:* RCW 18.32.390, 18.32.675, 18.32.735, 18.32.745, 18.32.755.
- Diking and drainage improvement districts, damaging improvements, penalty:* RCW 85.08.690.
- Discrimination, interference with human rights commission, penalty:* RCW 49.60.310.
- Diseased domestic animals, quarantine, penalty:* RCW 16.36.110.
- Diseases, dangerous, contagious, or infectious, penalty for violations concerning control of:* RCW 70.05.120, 70.24.080, 70.54.050.
- Disposal of dead animals, violations, penalty:* RCW 16.68.180.
- Dog law:* Chapter 16.08 RCW.
- Doors of buildings used by public, safety requirements, penalty:* RCW 70.54.070.
- Drugs:* Chapters 69.41, 69.50 RCW.
- Earthquake standards for construction for public buildings, penalty:* RCW 70.86.040.
- Elections**
bribery or coercion of voters, penalty: RCW 29A.84.620.
canvassing of votes law, penalty for violations: RCW 29A.60.200.
counterfeiting or unlawful possession of ballots, penalty: RCW 29A.84.540.
destroying or defacing election supplies and notices, etc., penalty: RCW 29A.84.550.
divulging ballot count, penalty: RCW 29A.84.730.
exit polling: RCW 29A.84.510.
general penalty for violations: Chapter 29A.84 RCW.
influencing voters to vote or not to vote by unlawful means, penalty: RCW 29A.84.630.

- initiative and referendum law, penalties for violations: RCW 29A.84.230, 29A.84.210, 29A.84.250.
- officer tampering with ballots, penalty: RCW 29A.84.420.
- printing or distributing official ballots unlawfully, penalty: RCW 29A.84.410.
- recall petition law, penalties for violations: RCW 29A.84.240, 29A.84.020, 29A.84.220.
- registration law violations, penalties: RCW 29A.84.110, 29A.84.130.
- repeating or voting twice, penalties concerning: RCW 29A.84.650, 29A.84.655.
- solicitation of bribe by voter in primary election, penalty: RCW 29A.84.640.
- unqualified voter voting, penalty: RCW 29A.84.660.
- violations by officers generally, penalty: RCW 29A.84.720.
- voting by mail law, penalty for violations: RCW 29A.84.680.
- voting machines, penalty for tampering with: RCW 29A.84.560.
- Electrical construction, penalty: RCW 19.29.060.
- Electricians and electrical installation laws, schedule of penalties—Appeal: RCW 19.28.131.
- Embalmer and funeral director laws, penalty: RCW 18.39.220.
- Endowment care cemeteries, penalties for violations of laws: RCW 68.40.085, 68.40.090.
- Engineer and land surveyor laws, penalty: RCW 18.43.120.
- Escrow agent, unlicensed: RCW 18.44.171.
- Explosives and devices regulated, penalties: Chapter 70.74 RCW.
- Facsimile signatures and seals, fraud in use of: RCW 39.62.040.
- Family abandonment, penalty: RCW 26.20.030.
- Family nonsupport, penalty: RCW 26.20.035.
- Farm labor contractors regulations, penalty: RCW 19.30.150.
- Filing false or forged instruments, penalty: RCW 40.16.030.
- Fire department vehicles and firefighters' private cars lighting and identification, penalty: RCW 46.37.188.
- Fire protection districts, burning permits, penalty for violation: RCW 52.12.101, 52.12.105.
- Firearms in vehicle, penalty: RCW 77.15.460.
- Fires, actions for spreading and kindling: RCW 4.24.040, 4.24.050.
- Firewood on state lands, permit required to remove, penalty: RCW 79.15.440.
- Fireworks
laws or rules, penalty: RCW 70.77.540.
unlawful acts relating to: Chapter 70.77 RCW.
- Fish, shellfish, and wildlife
false or misleading information and reports, penalty: RCW 77.15.270.
trafficking in, prohibited: RCW 77.15.260.
- Flood control districts, interest in contracts, penalty: RCW 86.09.286.
- Food and beverage workers' permit required, penalty: RCW 69.06.060.
- Food, drugs, and cosmetics, penalties for violations of act: RCW 69.04.040, 69.04.060, 69.04.070.
- Food fish and shellfish
commercial licenses and permits required—Exemption: RCW 77.65.010.
fish guards required on diversion devices, penalties, remedies for failure: RCW 77.57.010.
fishways required over dams, etc., penalties: RCW 77.57.030.
hatchery or cultural facility to be provided if fishways impractical, penalty: RCW 77.57.050.
- Forcible entry and detainer, penalty: RCW 59.12.230.
- Forest products, false or forged brands, etc., penalties: RCW 76.36.110, 76.36.120.
- Forest protection: Chapter 76.04 RCW.
- Fraudulent conveyances: Chapter 19.40 RCW.
- Gambling, civil action: RCW 4.24.070.
- Game and game fish, unlawful acts: Chapter 77.50 RCW.
- Gas or stink bombs, etc., prohibited, penalty: RCW 70.74.310.
- Girls' training school (see Maple Lane School)
- Grain and terminal warehouses, commodity inspections, laws and regulations, penalties for violations: RCW 22.09.310, 22.09.770, 22.09.890.
- Healing professions, rebating: RCW 19.68.010.
- Health care services, prohibited acts: Chapter 48.44 RCW.
- Highways
closure violations, penalty: RCW 47.48.040.
county or city road funds, illegal use of, penalty: RCW 47.08.110.
limited access facilities, violations concerning, penalty: RCW 47.52.120.
littering with glass, debris, etc., penalty, removal: RCW 46.61.645.
permitting escape of load from vehicle: RCW 46.61.655.
pipe lines, etc., across or on highways, penalties for construction without franchise or permit: RCW 47.44.060.
removal of native flora, etc., penalty: RCW 47.40.080.
traffic control devices violations: Chapter 47.36 RCW.
traffic signs, etc., penalty for defacing, etc.: RCW 46.61.080.
- Highways and toll bridges, general penalty for violations of title: RCW 47.04.090.
- Honey
penalty for violation of law regulating: RCW 69.28.180.
prohibited acts: RCW 69.28.080, 69.28.090.
- Horse racing, penalty for violations of laws and regulations: RCW 67.16.060.
- Hospital licensing required, penalty: RCW 70.41.170.
- Hotels
fraud in obtaining accommodations, etc., penalty: RCW 19.48.110.
sanitation and safety requirements, penalty: RCW 70.62.280.
- Human remains, penalties for violations concerning: RCW 68.64.150, 68.64.160.
- Individuals with mental illness, private establishments for, licensing violations: RCW 71.12.460.
- Industrial insurance, attorney's fees: RCW 51.52.120, 51.52.132.
- Initiative and referendum laws, penalties: RCW 29A.84.230, 29A.84.210, 29A.84.250.
- Insane (see Individuals with mental illness)
- Insect pest control rules, violations: RCW 17.24.100.
- Insurance code
destruction or injury of property to defraud or prejudice the insurer, penalty: RCW 48.30.220.
domestic insurers
corrupt practices as to votes relative to shareholders meetings, etc., penalty: RCW 48.07.060.
illegal dividends or reductions, penalty: RCW 48.08.040.
impairment of capital, penalty: RCW 48.08.050.
penalty for exhibiting false account, etc.: RCW 48.06.190.
solicitation permit required, penalty: RCW 48.06.030.
false claims or proof, etc., penalty: RCW 48.30.230.
fraud and unfair practices violations: Chapter 48.30 RCW.
general penalty for violations: RCW 48.01.080.
health care services, penalty for violation: RCW 48.44.060.
illegal dealing in premiums, penalty: RCW 48.30.190.
insurance producers, title insurance agents, and adjusters, license required: RCW 48.17.060.
insurance producers, title insurance agents, and adjusters, reporting and accounting premiums, penalty: RCW 48.17.480.
misrepresentation in application for insurance, penalty: RCW 48.30.210.
mutual insurers, impairment of surplus, penalty: RCW 48.09.340.
political contributions, penalty: RCW 48.30.110.
premiums to be specified in the policy, penalty for violation: RCW 48.18.180.
- Insurance, destruction, secretion, abandonment, etc., of property: RCW 48.30.220.
- Intoxicating liquor (see Liquor control)
- Ionizing radiation, prohibited acts: Chapter 70.98 RCW.
- Irrigation and rehabilitation districts, violation of rules: RCW 87.84.090.
- Judges or justices, addressing persons in unfit, etc., language, penalty: RCW 42.20.110.
- Labor and industries
disobeying subpoena to appear before officer, penalty: RCW 43.22.300.

- hotel inspections, penalty for falsifying or hindering, etc.: RCW 70.62.280.
- misuse of reports of employers, penalty: RCW 43.22.290.
- refusal of entry to factory, etc., penalty: RCW 43.22.310.
- Labor disputes, obtaining out-of-state personnel for certain purposes: RCW 49.44.100.
- Labor laws
- blacklisting prohibited, penalty: RCW 49.44.010.
 - bribery of labor representative, penalties: RCW 49.44.020, 49.44.030.
 - female and child labor, penalties for violations: RCW 26.28.070, 49.12.175.
 - hours of labor, penalties for violations: Chapter 49.28 RCW.
 - minimum wage and hours act violations, penalty: RCW 49.46.100.
 - obtaining labor by false recommendation, penalty: RCW 49.44.040.
 - prohibited practices, penalties for violations: Chapter 49.44 RCW.
 - prosecution, etc., for forming or joining labor union, etc., prohibited: RCW 49.36.030.
 - seasonal labor, fraud by employees to secure advances, penalty: RCW 49.40.030.
 - underground workers safety and health, penalties: RCW 49.24.060, 49.24.380.
 - wage payment and collection, penalties for violations: RCW 49.48.020, 49.48.040, 49.48.060, 49.52.050, 49.52.090.
- Land title registration, penalties for violations: RCW 65.12.730, 65.12.740, 65.12.750, 65.12.760.
- Legislative hearings, failure of subpoenaed witness to attend or testify, etc., penalties: RCW 44.16.120 through 44.16.150.
- Lie detector and similar tests as condition of employment—Penalty: RCW 49.44.120.
- Limited access facilities (see Highways)
- Liquor control
- consumption or serving in clubs, penalty: RCW 66.24.481.
 - penalties for violations of laws or regulations: Chapter 66.44 RCW.
 - purchase, attempt, by minor: RCW 66.44.280 through 66.44.292.
 - records of sales confidential, penalty: RCW 66.16.090.
 - transfer of identification card prohibited, penalties: RCW 66.20.200.
- Littering, depositing glass, debris, etc., on highways, beaches, waters, penalty, removal: RCW 46.61.645.
- Livestock—Removal from common range, duty, penalty: RCW 16.24.230.
- Logs, transporting without county log tolerance permit: RCW 46.44.047.
- Maple Lane School, unauthorized entrance to grounds or enticing girls away, etc., penalty: RCW 72.20.065.
- Marine biological preserve, penalty for violation: RCW 28B.20.320.
- Marriage
- certificates, penalty for failure to record: RCW 26.04.110.
 - license requirements, penalty for violations: RCW 26.04.200, 26.04.210, 26.04.240.
- Mausoleums and columbariums, penalty for violation of laws concerning construction of: RCW 68.28.060.
- Military affairs offenses defined, penalties: Chapter 38.32 RCW, RCW 38.40.040, 38.40.050, 38.40.110, 38.40.120.
- Milk and milk products used for animal food, prohibited acts: Chapter 15.37 RCW.
- Mining leases and contracts, disclosure of information obtained through state's right of entry: RCW 79.14.440.
- Minors
- child labor prohibited, penalty: RCW 26.28.070 (see also Labor laws).
 - enforcement of support for: RCW 74.20.060.
 - firearms: RCW 9.41.040, 9.41.042, 9.41.240.
 - juvenile offenders: Chapter 13.04 RCW.
 - procuring or possessing tobacco, penalties: RCW 26.28.080, 70.155.080.
- Motor vehicles: RCW 46.63.020.
- Municipal corporations
- approving or paying false claim against: RCW 42.24.110.
 - making false claim against: RCW 42.24.100.
- Municipal officers, violation of code of ethics, penalty: RCW 42.23.050.
- Mutual savings banks
- concealing or destroying evidence, penalty: RCW 32.04.110.
 - falsification of books, etc., penalty: RCW 32.04.100.
- general penalty when penalty not specifically provided: RCW 32.04.130.
- specific penalties of RCW 9.24.030, 9.24.040, and 9.24.050 invoked: RCW 32.04.120.
- transfer of property or assets due to insolvency or in contemplation of insolvency, penalty for violation of regulation: RCW 32.24.080.
- Narcotic drugs: Chapter 69.50 RCW.
- Native flora on state lands or on land adjoining highways and parks, penalty for removal, etc.: RCW 47.40.080.
- Navigation
- Pilotage Act: RCW 88.16.120, 88.16.130, 88.16.150.
 - violations generally: Chapter 88.08 RCW.
- Nuisances, civil remedies: Chapter 7.48 RCW.
- Nursing homes, penalty for unlicensed operation: RCW 18.51.150.
- Occupational motor vehicle operators' licenses, violation of restrictions: RCW 46.20.410.
- Offering false or forged instruments for filing: RCW 40.16.030.
- Oil and gas conservation, general penalty for violations of laws or regulations: RCW 78.52.550.
- Optometry laws, penalty for violations: RCW 18.53.150.
- Osteopathy violations, penalties: RCW 18.57.160.
- Parks and recreation, violations in parks specified, penalty: RCW 79A.05.165.
- Party line telephones, refusal to yield in emergency, penalty: RCW 70.85.020, 70.85.030.
- Patent medicine peddlers licensing, penalty for unlicensed sales: RCW 18.64.047.
- Pawnbrokers and secondhand dealers laws, penalties: RCW 19.60.066.
- Peaches, standards, inspection, penalty for violations: RCW 15.17.290.
- Peddlers, penalty for selling without license: RCW 36.71.060.
- Persons infected with disease, exposure to others, penalty: RCW 70.54.050.
- Pesticides, prohibited acts: Chapter 15.58 RCW.
- Pharmacy licensing laws and regulations, penalties: RCW 18.64.140, 18.64.250.
- Physical therapy practice regulations, penalties: RCW 18.74.090.
- Podiatric medicine and surgery, general penalty: RCW 18.22.220.
- Poisons: Chapters 69.36, 69.40 RCW.
- Pollution of water (see Water pollution)
- Pool tables or billiard tables or bowling alley for hire, license required, penalty: RCW 67.14.060.
- Port district regulations adopted by city or county, violations, penalty: RCW 53.08.220.
- Port districts, violations of rules relating to toll tunnels and bridges, penalty: RCW 53.34.190.
- Psychologists licensing and practice law, violations, penalty: RCW 18.83.180.
- Public assistance
- falsification of application, etc., penalty: RCW 74.08.055.
 - fraudulent practices: RCW 74.08.331.
 - records to be confidential, etc., penalty: RCW 74.04.060.
- Public libraries, penalties for injuring property or retaining books: RCW 27.12.330, 27.12.340.
- Public officers, misconduct, penalties: Chapter 42.20 RCW.
- Public records, etc., crimes concerning, penalties: Chapter 40.16 RCW.
- Public service companies
- auto and transport companies, penalty for violation: RCW 81.68.080.
 - motor freight carriers, penalties for violations: RCW 81.80.230, 81.80.355.
 - passengers for hire, failure to file bond or insurance policy, penalty: RCW 46.72.100.
- railroads
- employee requirements, penalties for violations: Chapter 81.40 RCW.
 - equipment, penalties for violations: RCW 81.44.085.
 - operating requirements, penalties for violations: RCW 81.48.020, 81.48.060.

- property damaged, sabotaged or stolen, penalties:* RCW 81.60.070, 81.60.080.
- rights-of-way and crossings, etc., penalties:* RCW 81.53.210, 81.54.030.
- regulatory fees, penalty:* RCW 81.24.080.
- securities, penalty:* RCW 81.08.120.
- street railways, penalties for violations:* RCW 81.64.130, 81.64.150.
- transfers of property, penalty:* RCW 81.12.060.
- violations of laws and regulations, general penalties:* RCW 81.04.380, 81.04.390.
- Public utilities**
- regulatory fees, penalty:* RCW 80.24.050.
- transfers of property, penalty:* RCW 80.12.060.
- violations of laws and regulations, general penalties:* RCW 80.04.380, 80.04.390.
- Public works, falsification of records, etc., penalty:* RCW 39.04.110, 39.12.050.
- Purchasing, state, interfering with bids:* RCW 43.19.1939.
- Real estate**
- brokers and salesperson laws, penalty:* RCW 18.85.411.
- mortgages, removal of property from mortgaged premises, penalty:* RCW 61.12.030.
- Rebating, etc., by practitioners of healing professions, penalty:* RCW 19.68.010.
- Recall petition laws, penalties:* RCW 29A.84.240, 29A.84.020, 29A.84.220.
- Recreational devices, inspection of, penalty:* RCW 79A.40.020, 79A.40.040.
- Referendum and initiative laws, penalties:* RCW 29A.84.230, 29A.84.210, 29A.84.250.
- Rules of the road:* Chapter 46.61 RCW.
- Savings and loan associations**
- advertising as without license:* RCW 33.08.010.
- concealing facts or destroying evidence, etc., penalty:* RCW 33.36.060.
- false statements concerning financial standings, penalty:* RCW 33.36.050.
- falsification of books, etc., penalty:* RCW 33.36.040.
- making prohibited loans or investments, penalty:* RCW 33.36.010.
- preferential transfer of property due to insolvency, penalty:* RCW 33.36.030.
- purchase at discount prohibited to officers, etc., penalty:* RCW 33.36.020.
- Schools**
- compulsory attendance, penalties:* RCW 28A.225.090.
- disclosing examination questions, penalty:* RCW 28A.635.040.
- disturbing meetings, penalty:* RCW 28A.635.030.
- failure to deliver books, etc., to successor, penalty:* RCW 28A.635.070.
- grafting by school officials, penalty:* RCW 28A.635.050.
- interfering by force or violence with any administrator, faculty member, or student unlawful—Penalty:* RCW 28B.10.570, 28B.10.572.
- intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty:* RCW 28B.10.571 and 28B.10.572.
- Securities act violations, penalty:* RCW 21.20.400 through 21.20.420.
- Sexual psychopaths:* Chapter 71.06 RCW.
- Sexually transmitted diseases, penalty for violation of control of:* RCW 70.24.080.
- Shellfish, sanitary control, penalties for violation of law regulating:* RCW 69.30.140.
- Sheriff's office employees, civil service for, penalty:* RCW 41.14.220.
- Ski lifts and other recreational conveyances:* RCW 79A.40.040.
- Snowmobile act**
- additional violations—Penalty:* RCW 46.10.495.
- operating violations, general penalty:* RCW 46.10.490, 46.10.500.
- Solid waste collection, unlawful acts:* Chapter 81.77 RCW.
- Sporting contest, fraud, penalty:* RCW 67.24.010.
- State bonds, fraud by engraver:* RCW 39.44.101.
- State employees' retirement, falsification of statements, etc., penalty:* RCW 41.40.055.
- State lands**
- firewood removal, permit required, penalty:* RCW 79.15.440.
- removing flora, etc., penalty:* RCW 47.40.080.
- trespass, etc.:* Chapter 79.02 RCW.
- State treasurer, penalty for embezzlement:* RCW 43.08.140.
- Steam boilers, safety requirements, penalty:* RCW 70.54.080.
- Stink or gas bombs prohibited, penalty:* RCW 70.74.310.
- Support of dependent children—Alternative method—1971 act:* Chapter 74.20A RCW.
- Swimming pools, violation of health laws and regulations:* RCW 70.90.205.
- Taxation**
- cigarette tax, penalties:* RCW 82.24.100, 82.24.110.
- general penalties:* RCW 82.32.290.
- motor vehicle fuel tax, penalties:* RCW 82.36.330, 82.36.380, 82.36.390, 82.36.400.
- personal property, disclosure of information unlawful:* RCW 84.40.340.
- property taxes**
- listing of property:* RCW 84.40.120.
- removal of property to avoid collection of, penalties:* RCW 84.56.120, 84.56.200.
- retail sales tax, penalties:* RCW 82.08.050, 82.08.120.
- use tax, penalty:* RCW 82.12.040.
- Teachers**
- abuse of a misdemeanor:* RCW 28A.635.010.
- retirement, falsification of statements, etc., penalty:* RCW 41.32.055.
- Telephones, party line, refusal to yield in emergency, penalty:** RCW 70.85.020, 70.85.030.
- Television reception improvement districts, penalty for false statement as to tax exemption:** RCW 36.95.190.
- Tires**
- pneumatic, passenger car, selling or offering for sale if under prescribed standards, penalty:* RCW 46.37.423.
- regrooved, selling or offering for sale if under prescribed standards, penalty:* RCW 46.37.424.
- selling or operating vehicle with tires not meeting standards of state patrol, penalty:* RCW 46.37.425.
- Tobacco, etc., minors procuring or possessing, penalties:** RCW 26.28.080, 70.155.080.
- Toll facilities, operation of motor vehicle on, prohibited acts:** RCW 46.61.690.
- Trading stamps and premiums, penalty for violations:** RCW 19.84.040.
- Unclaimed Property Act, penalties for violations:** RCW 63.29.340, 63.29.350.
- Unemployment compensation, penalties for violations:** Chapter 50.36 RCW.
- Use of lists of registered voters, violations relating to, penalty:** RCW 29A.08.720.
- Veterinarian laws and rules, penalty:** RCW 18.92.230, 18.92.240.
- Vital statistics requirements, penalty for violation:** RCW 70.58.280.
- Vouchers, public, false certification, penalty:** RCW 42.24.100.
- Wages (see Labor laws)**
- Warehouses, grain and terminal, commodity inspections, penalties for violation:** RCW 22.09.310, 22.09.340, 22.09.890.
- Warehousing deposits, general penalties:** Chapter 22.32 RCW.
- Washington Caustic Poison Act of 1929:** Chapter 69.36 RCW.
- Washington Criminal Code:** Title 9A RCW.
- Washington fresh fruit sales limitation act, violations:** RCW 15.21.060.
- Washington state patrol retirement fund, falsification of records, etc., to defraud, penalty:** RCW 43.43.320.
- Water pollution**
- control, penalty for violations:* RCW 90.48.140.
- drinking water pollution, etc.:* Chapter 70.54 RCW.
- pollution of water supply in cities and towns, penalty:* RCW 35.88.040.
- Weed districts, prevention of agent's right of entry, penalty:** RCW 17.04.280.
- Weights and measures law and rules, penalties for violations:** RCW 19.94.490 through 19.94.510.
- Wills, failing to deliver, penalty:** RCW 11.20.010.

Workers' compensation, penalties for violations of regulations concerning: Chapter 51.48 RCW, RCW 51.16.140.

X-rays, use in shoe fitting prohibited: RCW 70.98.170.

9.91.010 Denial of civil rights—Terms defined.

Terms used in this section shall have the following definitions:

(1)(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage, or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his or her agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, or color, to be treated as not welcome, accepted, desired, or solicited.

(d) "Any place of public resort, accommodation, assemblage, or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation, or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or

place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in *loco parentis* to direct the education and upbringing of a child under his or her control is hereby affirmed.

(2) Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor. [2011 c 336 § 329; 1953 c 87 § 1; 1909 c 249 § 434; RRS § 2686.]

Application forms, licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Interference with board against discrimination: RCW 49.60.310.

9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.

Every person who, being employed upon any railway, as engineer, motorman, gripman, conductor, switch tender, fireman, bridge tender, flagger, or signalman, or having charge of stations, starting, regulating or running trains upon a railway, or being employed as captain, engineer or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, is intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. [2000 c 239 § 3; 1915 c 165 § 2; 1909 c 249 § 275; RRS § 2527.]

Reviser's note: Caption for 1915 c 165 § 2 reads as follows: "Section 2527 [Rem. & Bal.] Intoxication of employees." See *State v. Crothers*, 118 Wash. 226.

Hunting while intoxicated—Penalty: RCW 77.15.675.

Operating vehicle under influence of intoxicants or drugs: RCW 46.20.285, 46.61.502.

Operating vessel in reckless manner or while under influence of alcohol or drugs: RCW 79A.60.040.

Railroads, employees, equipment, operations: Chapters 81.40, 81.44, 81.48 RCW.

Additional notes found at www.leg.wa.gov

9.91.025 Unlawful transit conduct. (1) A person is guilty of unlawful transit conduct if, while on or in a transit vehicle or in or at a transit station, he or she knowingly:

(a) Smokes or carries a lighted or smoldering pipe, cigar, or cigarette, unless he or she is smoking in an area designated and authorized by the transit authority;

(b) Discards litter other than in designated receptacles;

(c) Dumps or discards, or both, any materials on or at a transit facility including, but not limited to, hazardous substances and automotive fluids;

(d) Plays any radio, recorder, or other sound-producing equipment, except that nothing herein prohibits the use of the equipment when connected to earphones or an ear receiver that limits the sound to an individual listener. The use of public address systems or music systems that are authorized by a transit agency is permitted. The use of communications devices by transit employees and designated contractors or public safety officers in the line of duty is permitted, as is the use of private communications devices used to summon,

notify, or communicate with other individuals, such as pagers and cellular phones;

(e) Spits, expectorates, urinates, or defecates, except in appropriate plumbing fixtures in restroom facilities;

(f) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others, except that nothing herein prevents a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law;

(g) Consumes an alcoholic beverage or is in possession of an open alcoholic beverage container, unless authorized by the transit authority and required permits have been obtained;

(h) Obstructs or impedes the flow of transit vehicles or passenger traffic, hinders or prevents access to transit vehicles or stations, or otherwise unlawfully interferes with the provision or use of public transportation services;

(i) Unreasonably disturbs others by engaging in loud, raucous, unruly, harmful, or harassing behavior;

(j) Destroys, defaces, or otherwise damages property in a transit vehicle or at a transit facility;

(k) Throws an object in a transit vehicle, at a transit facility, or at any person at a transit facility with intent to do harm;

(l) Possesses an unissued transfer or fare media or tenders an unissued transfer or fare media as proof of fare payment;

(m) Falsely claims to be a transit operator or other transit employee or through words, actions, or the use of clothes, insignia, or equipment resembling department-issued uniforms and equipment, creates a false impression that he or she is a transit operator or other transit employee;

(n) Engages in gambling or any game of chance for the winning of money or anything of value;

(o) Skates on roller skates or in-line skates, or rides in or upon or by any means a coaster, skateboard, toy vehicle, or any similar device. However, a person may walk while wearing skates or carry a skateboard while on or in a transit vehicle or in or at a transit station if that conduct is not otherwise prohibited by law; or

(p) Engages in other conduct that is inconsistent with the intended use and purpose of the transit facility, transit station, or transit vehicle and refuses to obey the lawful commands of an agent of the transit authority or a peace officer to cease such conduct.

(2) For the purposes of this section:

(a) "Transit station" or "transit facility" means all passenger facilities, structures, stops, shelters, bus zones, properties, and rights-of-way of all kinds that are owned, leased, held, or used by a transit authority for the purpose of providing public transportation services.

(b) "Transit vehicle" means any motor vehicle, street car, train, trolley vehicle, ferry boat, or any other device, vessel, or vehicle that is owned or operated by a transit authority or an entity providing service on behalf of a transit authority that is used for the purpose of carrying passengers on a regular schedule.

(c) "Transit authority" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county transportation authority under chapter 36.57 RCW, a metropolitan municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area

under RCW 36.57.100, a regional transportation authority under chapter 81.112 RCW, or any special purpose district formed to operate a public transportation system.

(3) Any person who violates this section is guilty of a misdemeanor. [2009 c 279 § 3; 2004 c 118 § 1; 1994 c 45 § 4; 1992 c 77 § 1; 1984 c 167 § 1.]

Findings—Declaration—Severability—1994 c 45: See notes following RCW 7.48.140.

Drinking in public conveyance: RCW 66.44.250.

9.91.060 Leaving children unattended in parked automobile. Every person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, who shall leave such children in a parked automobile unattended by an adult while such person enters a tavern or other premises where vinous, spirituous, or malt liquors are dispensed for consumption on the premises shall be guilty of a gross misdemeanor. [1999 c 143 § 9; 1951 c 270 § 17.]

Leaving children unattended in standing vehicle with motor running: RCW 46.61.685.

9.91.130 Disposal of trash in charity donation receptacle. (1) It is unlawful for any person to throw, drop, deposit, discard, or otherwise dispose of any trash, including, but not limited to items that have deteriorated to the extent that they are no longer of monetary value or of use for the purpose they were intended; garbage, including any organic matter; or litter, in or around a receptacle provided by a charitable organization, as defined in RCW 19.09.020(2), for the donation of clothing, property, or other thing of monetary value to be used for the charitable purposes of such organization.

(2) Charitable organizations must post a clearly visible notice on the donation receptacles warning of the existence and content of this section and the penalties for violation of its provisions, as well as a general identification of the items which are appropriate to be deposited in the receptacle.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor, and the fine for such violation shall be not less than fifty dollars for each offense.

(4) Nothing in this section shall preclude a charitable organization which maintains the receptacle from pursuing a civil action and seeking whatever damages were sustained by reason of the violation of the provisions of this section. For a second or subsequent violation of this section, such person shall be liable for treble the amount of damages done by the person, but in no event less than two hundred dollars, and such damages may be recovered in a civil action before any district court judge. [1987 c 385 § 1.]

Additional notes found at www.leg.wa.gov

9.91.140 Food stamps—Unlawful sale. A person who sells food stamps obtained through the program established under RCW 74.04.500 or food stamp benefits transferred electronically, or food purchased therewith, is guilty of the following:

(1) A gross misdemeanor if the value of the stamps, benefits, or food transferred exceeds one hundred dollars; or

(2) A misdemeanor if the value of the stamps, benefits, or food transferred is one hundred dollars or less. [2003 c 53 § 49; 1998 c 79 § 1; 1996 c 78 § 1; 1988 c 62 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.142 Food stamps—Trafficking. A person who purchases, or who otherwise acquires and sells, or who traffics in, food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, is guilty of the following:

(1) A class C felony punishable according to chapter 9A.20 RCW if the face value of the stamps or benefits exceeds one hundred dollars; or

(2) A gross misdemeanor if the face value of the stamps or benefits is one hundred dollars or less. [2003 c 53 § 50.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.144 Food stamps—Unlawful redemption. A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, for redemption or causes such stamps or benefits to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 51.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.150 Tree spiking. (1) Any person who maliciously drives or places in any tree, forest material, forest debris, or other wood material any iron, steel, ceramic, or other substance sufficiently hard to injure saws or wood processing or manufacturing equipment, for the purpose of hindering logging or timber harvesting activities, is guilty of a class C felony under chapter 9A.20 RCW.

(2) Any person who, with the intent to use it in a violation of subsection (1) of this section, possesses any iron, steel, ceramic, or other substance sufficiently hard to injure saws or wood processing or manufacturing equipment is guilty of a gross misdemeanor under chapter 9A.20 RCW.

(3) As used in this section the terms "forest debris" and "forest material" have the same meanings as under RCW 76.04.005. [1988 c 224 § 1.]

9.91.155 Tree spiking—Action for damages. Any person who is damaged by any act prohibited in RCW 9.91.150 may bring a civil action to recover damages sustained, including a reasonable attorney's fee. A party seeking civil damages under this section may recover upon proof of a violation of the provisions of RCW 9.91.150 by a preponderance of the evidence. [1988 c 224 § 2.]

9.91.160 Personal protection spray devices. (1) It is unlawful for a person under eighteen years old, unless the person is at least fourteen years old and has the permission of a parent or guardian to do so, to purchase or possess a personal protection spray device. A violation of this subsection is a misdemeanor.

(2012 Ed.)

(2) No town, city, county, special purpose district, quasi-municipal corporation or other unit of government may prohibit a person eighteen years old or older, or a person fourteen years old or older who has the permission of a parent or guardian to do so, from purchasing or possessing a personal protection spray device or from using such a device in a manner consistent with the authorized use of force under RCW 9A.16.020. No town, city, county, special purpose district, quasi-municipal corporation, or other unit of government may prohibit a person eighteen years old or older from delivering a personal protection spray device to a person authorized to possess such a device.

(3) For purposes of this section:

(a) "Personal protection spray device" means a commercially available dispensing device designed and intended for use in self-defense and containing a nonlethal sternutator or lacrimator agent, including but not limited to:

(i) Tear gas, the active ingredient of which is either chloracetophenone (CN) or O-chlorobenzylidene malonitrile (CS); or

(ii) Other agent commonly known as mace, pepper mace, or pepper gas.

(b) "Delivering" means actual, constructive, or attempted transferring from one person to another.

(4) Nothing in this section authorizes the delivery, purchase, possession, or use of any device or chemical agent that is otherwise prohibited by state law. [1994 sp.s. c 7 § 514.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.91.170 Interfering with dog guide or service animal. (1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(2)(a) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(3) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor.

(4) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor.

(5) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(6) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the

intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030.

(7)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and compensation for wages or earned income lost by the dog guide or service animal user.

(8) Nothing in this section shall affect any civil remedies available for violation of this section.

(9) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value. [2003 c 53 § 52; 2001 c 112 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.91.175 Interfering with search and rescue dog.

(1)(a)(i) Any person who has received notice that his or her behavior is interfering with the use of an on-duty search and rescue dog who continues with reckless disregard to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (a)(ii) of this subsection applies.

(ii) A second or subsequent violation of (a)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b)(i) Any person who, with reckless disregard, allows his or her dog to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (b)(ii) of this subsection applies.

(ii) A second or subsequent violation of (b)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(2)(a) Any person who, with reckless disregard, injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Any person who intentionally injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a class C felony.

(4) Any person who wrongfully obtains or exerts unauthorized control over an on-duty search and rescue dog with the intent to deprive the dog user of his or her search and rescue dog is guilty of theft in the first degree under RCW 9A.56.030.

(5)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the search and rescue dog user and the dog that arise out of, or are related to, the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog, the training of a replacement search and rescue dog, or retraining of the affected dog and all related veterinary and care expenses; and

(ii) Medical expenses of the search and rescue dog user, training of the dog user, and compensation for any wages or earned income lost by the search and rescue dog user as a result of a violation of subsection (1), (2), (3), or (4) of this section.

(6) Nothing in this section affects any civil remedies available for violation of this section.

(7) For purposes of this section, "search and rescue dog" means a dog that is trained for the purpose of search and rescue of persons lost or missing. [2005 c 212 § 1.]

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

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

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

(4) "Violent video or computer game" means a video or computer game that contains realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form in the game who is depicted, by dress or other recognizable symbols, as a public law enforcement officer. [2003 c 365 § 2.]

Findings—2003 c 365: "The legislature finds that there has been an increase in studies showing a correlation between exposure to violent video and computer games and various forms of hostile and antisocial behavior. The entertainment software industry's ratings and content descriptors of video and computer games reflect that some video and computer games are suitable only for adults due to graphic depictions of sex and/or violence. Furthermore, some video and computer games focus on violence specifically against public law enforcement officers such as police and firefighters. The legislature encourages retailers and parents to utilize the rating system.

In addition, the legislature finds there is a compelling interest to curb hostile and antisocial behavior in Washington's youth and to foster respect for public law enforcement officers." [2003 c 365 § 1.]

Chapter 9.92 RCW PUNISHMENT

Sections

9.92.005	Penalty assessments in addition to fine or bail forfeiture— Crime victims compensation account.
9.92.010	Punishment of felony when not fixed by statute.
9.92.020	Punishment of gross misdemeanor when not fixed by statute.
9.92.030	Punishment of misdemeanor when not fixed by statute.
9.92.040	Punishment for contempt.
9.92.060	Suspending sentences.
9.92.062	Suspended sentence—Termination date—Application.
9.92.064	Suspended sentence—Termination date, establishment— Modification of terms.
9.92.066	Termination of suspended sentence—Restoration of civil rights—Vacation of conviction.
9.92.070	Payment of fine and costs in installments.
9.92.080	Sentence on two or more convictions or counts.
9.92.090	Habitual criminals.
9.92.100	Prevention of procreation.
9.92.110	Convicts protected—Forfeitures abolished.
9.92.120	Conviction of public officer forfeits trust.
9.92.130	City jail prisoners may be compelled to work.
9.92.140	County jail prisoners may be compelled to work.
9.92.151	Early release for good behavior.
9.92.200	Chapter not to affect dispositions under juvenile justice act.
9.92.900	RCW 9.92.050 through 9.92.090 inapplicable to felonies com- mitted on or after July 1, 1984.

Court to fix maximum sentence: RCW 9.95.010.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

Juvenile offenders—Commitment: Chapter 13.04 RCW.

9.92.005 Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account. See RCW 7.68.035.

9.92.010 Punishment of felony when not fixed by statute. Every person convicted of a felony for which no maximum punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine and the offense shall be classified as a class B felony. [1996 c 44 § 2; 1982 1st ex.s. c 47 § 5; 1909 c 249 § 13; RRS § 2265.]

Classification of crimes: Chapter 9A.20 RCW.

Additional notes found at www.leg.wa.gov

9.92.020 Punishment of gross misdemeanor when not fixed by statute. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term

fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. [2011 c 96 § 10; 1982 1st ex.s. c 47 § 6; 1909 c 249 § 15; RRS § 2267.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

9.92.030 Punishment of misdemeanor when not fixed by statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine. [1982 1st ex.s. c 47 § 7; 1909 c 249 § 14; Code 1881 § 785; RRS § 2266.]

Additional notes found at www.leg.wa.gov

9.92.040 Punishment for contempt. A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. [1909 c 249 § 21; RRS § 2273.]

Contempt: Chapter 7.21 RCW.

9.92.060 Suspending sentences. (1) Whenever any person is convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, rape of a child, or rape, the superior court may, in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by the superior court, and, upon such terms as the superior court may determine, that the sentenced person be placed under the charge of:

(a) A community corrections officer employed by the department of corrections, if the person is subject to supervision under RCW 9.94A.501 or 9.94A.5011; or

(b) A probation officer employed or contracted for by the county, if the county has elected to assume responsibility for the supervision of superior court misdemeanant probationers.

(2) As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

(3) As a condition of the suspended sentence, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanant probationers within its jurisdiction, the superior court misdemeanant probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanant probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(4) If restitution to the victim has been ordered under subsection (2)(b) of this section and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If the superior court has ordered supervision and restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence. [2011 1st sp.s. c 40 § 5; 2005 c 362 § 2; 1996 c 298 § 5; 1995 1st sp.s. c 19 § 30; 1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1; 1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2005 c 362: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Intent—1987 c 202: See note following RCW 2.04.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Probation: RCW 9.95.200 through 9.95.250.

Probation and parole services, provision by counties: RCW 36.01.070.

Restitution

alternative to fine: RCW 9A.20.030.

condition of probation: RCW 9.95.210.

disposition when victim not found or dead: RCW 7.68.290.

Additional notes found at www.leg.wa.gov

9.92.062 Suspended sentence—Termination date—Application. In all cases prior to August 9, 1971, wherein the execution of sentence has been suspended pursuant to RCW 9.92.060, such person may apply to the court by which he or she was convicted and sentenced to establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. [2011 c 336 § 330; 1971 ex.s. c 188 § 1.]

Additional notes found at www.leg.wa.gov

9.92.064 Suspended sentence—Termination date, establishment—Modification of terms. In the case of a person granted a suspended sentence under the provisions of

RCW 9.92.060, the court shall establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. Prior to the entry of an order formally terminating a suspended sentence the court may modify the terms and conditions of the suspension or extend the period of the suspended sentence. [1982 1st ex.s. c 47 § 9; 1971 ex.s. c 188 § 2.]

Additional notes found at www.leg.wa.gov

9.92.066 Termination of suspended sentence—Restoration of civil rights—Vacation of conviction. (1) Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his or her civil rights not already restored by RCW 29A.08.520. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.

(2)(a) Upon termination of a suspended sentence under RCW 9.92.060 or 9.95.210, the person may apply to the sentencing court for a vacation of the person's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the person has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2009 c 325 § 2; 2003 c 66 § 2; 1971 ex.s. c 188 § 3.]

Additional notes found at www.leg.wa.gov

9.92.070 Payment of fine and costs in installments. Hereafter whenever any judge of any superior court or a district or municipal judge shall sentence any person to pay any fine and costs, the judge may, in the judge's discretion, provide that such fine and costs may be paid in certain designated installments, or within certain designated period or periods; and if such fine and costs shall be paid by the defendant in accordance with such order no commitment or imprisonment of the defendant shall be made for failure to pay such fine or costs. PROVIDED, that the provisions of this section shall not apply to any sentence given for the violation of any of the liquor laws of this state. [1987 c 3 § 4; 1923 c 15 § 1; RRS § 2280-1.]

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Payment of fine and costs in installments: RCW 10.01.170.

Additional notes found at www.leg.wa.gov

9.92.080 Sentence on two or more convictions or counts. (1) Whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms: PROVIDED, That any person granted probation pursuant to the provisions of RCW 9.95.210 and/or 9.92.060 shall not be considered to be under sentence of a felony for the purposes of this subsection.

(2) Whenever a person is convicted of two or more offenses which arise from a single act or omission, the sentences imposed therefor shall run concurrently, unless the court, in pronouncing sentence, expressly orders the service of said sentences to be consecutive.

(3) In all other cases, whenever a person is convicted of two or more offenses arising from separate and distinct acts or omissions, and not otherwise governed by the provisions of subsections (1) and (2) of this section, the sentences imposed therefor shall run consecutively, unless the court, in pronouncing the second or other subsequent sentences, expressly orders concurrent service thereof.

(4) The sentencing court may require the secretary of corrections, or his or her designee, to provide information to the court concerning the existence of all prior judgments against the defendant, the terms of imprisonment imposed, and the status thereof. [2011 c 336 § 331; 1981 c 136 § 35; 1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

Additional notes found at www.leg.wa.gov

9.92.090 Habitual criminals. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in a state correctional facility for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in a state correctional facility for life. [1992 c 7 § 18; 1909 c 249 § 34; 1903 c 86 §§ 1, 2; RRS § 2286.]

Additional notes found at www.leg.wa.gov

9.92.100 Prevention of procreation. Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation. [1909 c 249 § 35; RRS § 2287.]

(2012 Ed.)

9.92.110 Convicts protected—Forfeitures abolished. Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his or her person shall be punished in the same manner as if he or she were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case of suicide or where a person flees from justice, are abolished. [2011 c 336 § 332; 1909 c 249 § 36; RRS § 2288.]

Inheritance rights of slayers or abusers: Chapter 11.84 RCW.

9.92.120 Conviction of public officer forfeits trust. The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his or her office, and shall disqualify him or her from ever afterward holding any public office in this state. [2011 c 336 § 333; 1909 c 249 § 37; RRS § 2289.]

Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Misconduct of public officers: Chapter 42.20 RCW.

Vacancy of public office, causes: RCW 42.12.010.

9.92.130 City jail prisoners may be compelled to work. When a person has been sentenced by any municipal or district judge in this state to a term of imprisonment in a city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city. [1987 c 202 § 144; Code 1881 § 2075; RRS § 10189.]

Intent—1987 c 202: See note following RCW 2.04.190.

9.92.140 County jail prisoners may be compelled to work. When a person has been sentenced by a district judge or a judge of the superior court to a term of imprisonment in the county jail, whether in default of payment of a fine, or costs or otherwise; such person may be compelled to work eight hours, each day of such term, in and about the county buildings, public roads, streets and grounds: PROVIDED, This section and RCW 9.92.130 shall not apply to persons committed in default of bail. [1987 c 202 § 145; Code 1881 § 2076; 1867 p 56 § 24; 1858 p 10 § 1; RRS § 10190.]

Intent—1987 c 202: See note following RCW 2.04.190.

Employment of prisoners: RCW 36.28.100.

Working out fine: Chapter 10.82 RCW.

9.92.151 Early release for good behavior. (1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an

offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(2) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2009 c 28 § 3; 2004 c 176 § 5; 1990 c 3 § 201; 1989 c 248 § 1.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Additional notes found at www.leg.wa.gov

9.92.200 Chapter not to affect dispositions under juvenile justice act. No provision of this chapter shall authorize a court to suspend or defer the imposition or the execution of a disposition under chapter 13.40 RCW, as now law or hereafter amended. [1981 c 299 § 21.]

9.92.900 RCW *9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW *9.92.050, 9.92.060, 9.92.062, 9.92.064, 9.92.066, 9.92.070, 9.92.080, and 9.92.090. [1984 c 209 § 2; 1981 c 137 § 31.]

***Reviser's note:** RCW 9.92.050 was repealed by 1992 c 7 § 64.

Additional notes found at www.leg.wa.gov

Chapter 9.94 RCW

PRISONERS—CORRECTIONAL INSTITUTIONS

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9.94.070	Persistent prison misbehavior.

Convict-made goods, restriction on sale of: Chapter 72.60 RCW.

Obstructing governmental operation: Chapter 9A.76 RCW.

State institutions: Title 72 RCW.

9.94.010 Prison riot—Penalty. (1) Whenever two or more inmates of a correctional institution assemble for any purpose, and act in such a manner as to disturb the good order of the institution and contrary to the commands of the officers of the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot.

(2) Every inmate of a correctional institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding, or abetting the same, is guilty of a class B felony and shall be punished by

imprisonment in a state correctional institution for not less than one year nor more than ten years, which shall be in addition to the sentence being served. [2003 c 53 § 53; 1995 c 314 § 1; 1955 c 241 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.94.030 Holding person hostage—Interference with officer's duties. Whenever any inmate of a correctional institution shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his or her duties, by force or violence, or the threat thereof, he or she shall be guilty of a class B felony and upon conviction shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years. [2003 c 53 § 54; 1995 c 314 § 3; 1992 c 7 § 20; 1957 c 112 § 1; 1955 c 241 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Interfering with public officer: Chapter 9A.76 RCW.

Kidnapping: Chapter 9A.40 RCW.

9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty. (1) Every person serving a sentence in any state correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a class B felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control any weapon, firearm, or any instrument that, if used, could produce serious bodily injury to the person of another, is guilty of a class C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served. [2005 c 361 § 1; 1995 c 314 § 4; 1979 c 121 § 1; 1977 ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 38 § 18. Prior: 1955 c 241 § 4.]

Additional notes found at www.leg.wa.gov

9.94.041 Narcotic drugs, controlled substances—Possession, etc., by prisoners—Penalty. (1) Every person serving a sentence in any state correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any narcotic drug or controlled substance as defined in chapter 69.50 RCW is guilty of a class C felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, is guilty of a class C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served. [1995 c 314 § 5; 1979 c 121 § 2.]

9.94.043 Deadly weapons—Possession on premises by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the first degree if, without authorization to do so, the person knowingly possesses or has under his or her control a deadly weapon on or in the buildings or adjacent grounds subject to the care, control, or supervision of a state correctional institution. Deadly weapon is used as defined in RCW 9A.04.110: PROVIDED, That such correctional buildings, grounds, or property are properly posted pursuant to RCW 9.94.047, and such person has knowingly entered thereon: PROVIDED FURTHER, That the provisions of this section do not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the correctional institution premises, proceeds directly along an access road to the administration building and promptly checks his or her firearm(s) with the appropriate authorities. The person may reclaim his or her firearm(s) upon leaving, but he or she must immediately and directly depart from the premises.

Possession of contraband on the premises of a state correctional institution in the first degree is a class B felony. [1979 c 121 § 3.]

9.94.045 Narcotic drugs or controlled substances—Possession by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the second degree if, without authorization to do so, the person knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, on or in the buildings, grounds, or any other real property subject to the care, control, or supervision of a state correctional institution.

Possession of contraband on the premises of a state correctional institution in the second degree is a class C felony. [1979 c 121 § 4.]

9.94.047 Posting of perimeter of premises of institutions covered by RCW 9.94.040 through 9.94.049. The perimeter of the premises of correctional institutions covered by RCW 9.94.040 through 9.94.049 shall be posted at reasonable intervals to alert the public as to the existence of RCW 9.94.040 through 9.94.049. [1979 c 121 § 5.]

9.94.049 "Correctional institution" and "state correctional institution" defined. (1) For the purposes of this

chapter, the term "correctional institution" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including state prisons, county and local jails, and other facilities operated by the department of corrections or local governmental units primarily for the purposes of punishment, correction, or rehabilitation following conviction of a criminal offense.

(2) For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons. [1995 c 314 § 6; 1992 c 7 § 21; 1985 c 350 § 3; 1979 c 121 § 6.]

9.94.050 Correctional employees. Any correctional employee, while acting in the supervision and transportation of prisoners, and in the apprehension of prisoners who have escaped, shall have the powers and duties of a peace officer. [1992 c 7 § 22; 1955 c 241 § 5.]

9.94.070 Persistent prison misbehavior. (1) An inmate of a state correctional institution who is serving a sentence for an offense committed on or after August 1, 1995, commits the crime of persistent prison misbehavior if the inmate knowingly commits a serious infraction, that does not constitute a class A or class B felony, after losing all potential earned early release time credit.

(2) "Serious infraction" means misconduct that has been designated as a serious infraction by department of corrections rules adopted under RCW 72.09.130.

(3) "State correctional institution" has the same meaning as in RCW 9.94.049.

(4) The crime of persistent prison misbehavior is a class C felony punishable as provided in RCW 9A.20.021. The sentence imposed for this crime must be served consecutive to any sentence being served at the time the crime is committed. [1995 c 385 § 1.]

**Chapter 9.94A RCW
SENTENCING REFORM ACT OF 1981**

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- 9.94A.925 Application—2003 c 379 §§ 13-27.
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- 9.94A.930 Recodification.

9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve himself or herself;
- (6) Make frugal use of the state's and local governments' resources; and

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(7) Reduce the risk of reoffending by offenders in the community. [2011 c 336 § 334; 1999 c 196 § 1; 1981 c 137 § 1.]

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

Additional notes found at www.leg.wa.gov

9.94A.015 Finding—Intent—2000 c 28. The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.

The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement. [2000 c 28 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.020 Short title. This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(25) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(26) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(27) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(29) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(30) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(31) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state

felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or pro-

moted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(40) "Public school" has the same meaning as in RCW 28A.150.010.

(41) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(42) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(43) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(44) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(45) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(47) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(49) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(51) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(52) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(53) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(54) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(56) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(57) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2012 c 143 § 1. Prior: 2011 1st sp.s. c 40 § 8; 2011 c 87 § 2; prior: 2010 c 274 § 401; 2010 c 267 § 9; 2010 c 227 § 11; 2010 c 224 § 1; 2009 c 375 § 4; (2009 c 375 § 3 expired August 1, 2009); 2009 c 28 § 4; prior: 2008 c 276 § 309; 2008 c 231 § 23; 2008 c 230 § 2; 2008 c 7 § 1; prior: 2006 c 139 § 5; (2006 c 139 § 4 expired July 1, 2006); 2006 c 124 § 1; 2006 c 122 § 7; (2006 c 122 § 6 expired July 1, 2006); 2006 c 73 § 5; 2005 c 436 § 1; 2003 c 53 § 55; prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997

c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

*Reviser's note: RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—2010 c 274: See note following RCW 10.31.100.

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Delayed effective date—2008 c 230 §§ 1-3: See note following RCW 9A.44.130.

Short title—2008 c 7: "This act may be known and cited as the Chelsea Harrison act." [2008 c 7 § 2.]

Effective date—2006 c 139 § 5: "Section 5 of this act takes effect July 1, 2006." [2006 c 139 § 7.]

Expiration date—2006 c 139 § 4: "Section 4 of this act expires July 1, 2006." [2006 c 139 § 6.]

Effective date—2006 c 124: "Except for section 2 of this act, this act takes effect July 1, 2006." [2006 c 124 § 5.]

Effective date—2006 c 122 §§ 5 and 7: See note following RCW 9.94A.507.

Expiration date—2006 c 122 §§ 4 and 6: See note following RCW 9.94A.507.

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Effective date—2006 c 73: See note following RCW 46.61.502.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the

sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application—2002 c 107: "RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Finding—Intent—2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

State preemption of criminal street gang definitions: Chapter 9.101 RCW.

Additional notes found at www.leg.wa.gov

9.94A.035 Classification of felonies not in Title 9A RCW. For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter. [1996 c 44 § 1.]

9.94A.171 Tolling of term of confinement, supervision. (1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial con-

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finement shall be tolled during any period of time spent in total confinement pursuant to a new conviction.

(2) Any term of community custody shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3)(a) For offenders other than sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless the offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the imposition of the remaining sentence or the original sentence will continue to toll the period of community custody. In addition, inpatient treatment ordered by the court in lieu of jail time shall not toll the period of community custody.

(b) For sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the sex offender is in confinement for any reason.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

(5) For the purposes of this section, "tolling" means the period of time in which community custody or confinement time is paused and for which the offender does not receive credit towards the term ordered. [2011 1st sp.s. c 40 § 1; 2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625, 9.94A.170.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs. (1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsec-

tion. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state. [2010 c 224 § 10; (2011 c 96 § 11 repealed by 2011 1st sp.s. c 40 § 43); 2009 c 28 § 5; 2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.340 Equal application. The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

9.94A.345 Timing. Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed. [2000 c 26 § 2.]

Intent—2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]

PROSECUTORIAL STANDARDS

9.94A.401 Introduction. These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14. Formerly RCW 9.94A.430.]

9.94A.411 Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimis Violation** - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) **Pending Conviction on Another Charge** - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) **High Disproportionate Cost of Prosecution** - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) **Improper Motives of Complainant** - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose,

would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

- Aggravated Murder
- 1st Degree Murder
- 2nd Degree Murder
- 1st Degree Manslaughter
- 2nd Degree Manslaughter
- 1st Degree Kidnapping
- 2nd Degree Kidnapping
- 1st Degree Assault
- 2nd Degree Assault
- 3rd Degree Assault
- 1st Degree Assault of a Child
- 2nd Degree Assault of a Child

- 3rd Degree Assault of a Child
- 1st Degree Rape
- 2nd Degree Rape
- 3rd Degree Rape
- 1st Degree Rape of a Child
- 2nd Degree Rape of a Child
- 3rd Degree Rape of a Child
- 1st Degree Robbery
- 2nd Degree Robbery
- 1st Degree Arson
- 1st Degree Burglary
- 1st Degree Identity Theft
- 2nd Degree Identity Theft
- 1st Degree Extortion
- 2nd Degree Extortion
- Indecent Liberties
- Incest
- Vehicle Homicide
- Vehicle Assault
- 1st Degree Child Molestation
- 2nd Degree Child Molestation
- 3rd Degree Child Molestation
- 1st Degree Promoting Prostitution
- Intimidating a Juror
- Communication with a Minor
- Intimidating a Witness
- Intimidating a Public Servant
- Bomb Threat (if against person)
- Unlawful Imprisonment
- Promoting a Suicide Attempt
- Riot (if against person)
- Stalking
- Custodial Assault
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Counterfeiting (if a violation of RCW 9.16.035(4))
- Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
- Felony Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

CRIMES AGAINST PROPERTY/OTHER CRIMES

- 2nd Degree Arson
- 1st Degree Escape
- 2nd Degree Escape
- 2nd Degree Burglary
- 1st Degree Theft
- 2nd Degree Theft
- 1st Degree Perjury
- 2nd Degree Perjury
- 1st Degree Introducing Contraband
- 2nd Degree Introducing Contraband
- 1st Degree Possession of Stolen Property
- 2nd Degree Possession of Stolen Property
- Bribery
- Bribing a Witness
- Bribe received by a Witness
- Bomb Threat (if against property)

1st Degree Malicious Mischief
 2nd Degree Malicious Mischief
 1st Degree Reckless Burning
 Taking a Motor Vehicle without Authorization
 Forgery
 2nd Degree Promoting Prostitution
 Tampering with a Witness
 Trading in Public Office
 Trading in Special Influence
 Receiving/Granting Unlawful Compensation
 Bigamy
 Eluding a Pursuing Police Vehicle
 Willful Failure to Return from Furlough
 Escape from Community Custody
 Riot (if against property)
 1st Degree Theft of Livestock
 2nd Degree Theft of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(A) Will significantly enhance the strength of the state's case at trial; or

(B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(A) Charging a higher degree;

(B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions. [2006 c 271 § 1; 2006 c 73 § 13. Prior: 2000 c 119 § 28; 2000 c 28 § 17; prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15. Formerly RCW 9.94A.440.]

Reviser's note: This section was amended by 2006 c 73 § 13 and by 2006 c 271 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2006 c 73: See note following RCW 46.61.502.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Additional notes found at www.leg.wa.gov

9.94A.421 Plea agreements—Discussions—Contents of agreements. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(1) Move for dismissal of other charges or counts;

(2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;

(3) Recommend a particular sentence outside of the sentence range;

(4) Agree to file a particular charge or count;

(5) Agree not to file other charges or counts; or

(6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

In a case involving a crime against persons as defined in RCW 9.94A.411, the prosecutor shall make reasonable efforts to inform the victim of the violent offense of the nature of and reasons for the plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement.

The court shall not participate in any discussions under this section. [1995 c 288 § 1; 1981 c 137 § 8. Formerly RCW 9.94A.080.]

Additional notes found at www.leg.wa.gov

9.94A.431 Plea agreements—Information to court—Approval or disapproval—Sentencing judge not bound.

(1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.421, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The prosecutor shall inform the court on the record whether the victim or victims of all crimes against persons, as defined in RCW 9.94A.411, covered by the plea agreement have expressed any objections to or comments on the nature of and reasons for the plea agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea. [1995 c 288 § 2; 1984 c 209 § 4; 1981 c 137 § 9. Formerly RCW 9.94A.090.]

Additional notes found at www.leg.wa.gov

9.94A.441 Plea agreements—Criminal history. The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing. [1981 c 137 § 10. Formerly RCW 9.94A.100.]

Additional notes found at www.leg.wa.gov

9.94A.450 Plea dispositions. STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(2) In certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

(a) Evidentiary problems which make conviction on the original charges doubtful;

(b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(c) A request by the victim when it is not the result of pressure from the defendant;

(d) The discovery of facts which mitigate the seriousness of the defendant's conduct;

(e) The correction of errors in the initial charging decision;

(f) The defendant's history with respect to criminal activity;

(g) The nature and seriousness of the offense or offenses charged;

(h) The probable effect on witnesses. [1983 c 115 § 16.]

9.94A.460 Sentence recommendations. STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1983 c 115 § 17.]

9.94A.470 Armed offenders. Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.411(2), any and all felony crimes involving any deadly weapon special verdict under *RCW 9.94A.602, any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.411(2) as crimes against persons. [2002 c 290 § 14; 1995 c 129 § 4 (Initiative Measure No. 159).]

*Reviser's note: RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

9.94A.475 Plea agreements and sentences for certain offenders—Public records. Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

(1) Any violent offense as defined in this chapter;

(2) Any most serious offense as defined in this chapter;

(3) Any felony with a deadly weapon special verdict under RCW 9.94A.825;

(4) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both;

(5) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony; or

(6) The felony crime of driving a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.502, and felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504. [2012 c 183 § 2; 2002 c 290 § 15; 1997 c 338 § 48; 1995 c 129 § 5 (Initiative Measure No. 159). Formerly RCW 9.94A.103.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

9.94A.480 Judgment and sentence document—Delivery to caseload forecast council. (1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section.

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the caseload forecast council. [2011 1st sp.s. c 40 § 27; 2002 c 290 § 16; 1997 c 338 § 49; 1995 c 129 § 6 (Initiative Measure No. 159). Formerly RCW 9.94A.105.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

SENTENCING

9.94A.500 Sentencing hearing—Presentencing procedures—Disclosure of mental health services information. (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents

relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information related to mental health services, as defined in RCW *71.05.445 and 71.34.345, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information related to mental health services as authorized by RCW *71.05.445, 71.34.345, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2008 c 231 § 2; 2006 c 339 § 303; 2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

***Reviser's note:** RCW 71.05.445 was amended by 2009 c 320 § 4, deleting the definition of "information related to mental health services."

Intent—2008 c 231 §§ 2-4: "It is the legislature's intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act's goals of:

(1) Ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;

(2) Ensuring punishment that is just; and

(3) Ensuring that sentences are commensurate with the punishment imposed on others for committing similar offenses.

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. These amendments are consistent with the United States supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that double jeopardy is not implicated at resentencing following an appeal or collateral attack." [2008 c 231 § 1.]

Application—2008 c 231 §§ 2 and 3: "Sections 2 and 3 of this act apply to all sentencings and resentencings commenced before, on, or after June 12, 2008." [2008 c 231 § 5.]

Severability—2008 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 231 § 62.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Intent—2000 c 75: See note following RCW 71.05.445.

Intent—1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

(1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and

(2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

(2012 Ed.)

Additional notes found at www.leg.wa.gov

9.94A.501 Department must supervise specified offenders—Risk assessment of felony offenders. (1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes;

and

(iv) Violation of RCW 9A.44.132(2) (failure to register);

and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been plead and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e) Has a current conviction for a domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or 9.94A.670; or

(g) Is subject to supervision pursuant to RCW 9.94A.745.

(5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or

RCW 9.94A.5011. [2011 1st sp.s. c 40 § 2. Prior: 2010 c 267 § 10; 2010 c 224 § 3; 2009 c 376 § 2; (2009 c 376 § 1 expired August 1, 2009); 2009 c 375 § 2; (2009 c 375 § 1 expired August 1, 2009); 2008 c 231 § 24; 2005 c 362 § 1; 2003 c 379 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: "(1) Except as otherwise provided in this section, the provisions of this act apply to persons convicted before, on, or after June 15, 2011.

(2) By January 1, 2012, consistent with RCW 9.94A.171, 9.94A.501, and section 3 of this act, the department of corrections shall recalculate the term of community custody for offenders currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.

(3) By January 1, 2012, consistent with the provisions of RCW 9.94A.650, the department of corrections shall recalculate the term of community custody for each offender sentenced to a first-time offender waiver under RCW 9.94A.650 and currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject." [2011 1st sp.s. c 40 § 42.]

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: "Sections 1 through 9 and 42 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 15, 2011]." [2011 1st sp.s. c 40 § 44.]

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 376 § 1: "Section 1 of this act expires August 1, 2009." [2009 c 376 § 4.]

Expiration date—2009 c 375 §§ 1, 3, and 13: "Sections 1, 3, and 13 of this act expire August 1, 2009." [2009 c 375 § 19.]

Application—2009 c 375: "This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after July 26, 2009." [2009 c 375 § 20.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2005 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 362 § 5.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services—County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

9.94A.5011 Supervision of specified offenders. (Expires August 1, 2014.) (1) The department shall supervise every offender convicted prior to August 2, 2011, of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense as provided in this subsection. The superior court shall order probation for offenders who have:

(a) A current conviction for fourth degree assault or violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145; and

(b) A prior conviction for one or more of the following:

(i) A violent offense;

(ii) A sex offense;

(iii) A crime against a person as provided in RCW 9.94A.411;

(iv) Fourth degree assault; or

(v) Violation of a domestic violence court order.

(2) This section expires August 1, 2014. [2011 1st sp.s. c 40 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

9.94A.505 Sentences. (1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention. [2010 c 224 § 4; 2009 c 389 § 1; 2009 c 28 § 6; 2008 c 231 § 25; 2006 c 73 § 6. Prior: 2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2; prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12. Formerly RCW 9.94A.120.]

Effective date—2009 c 389 §§ 1 and 3-5: "Sections 1 and 3 through 5 of this act take effect August 1, 2009." [2009 c 389 § 8.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—Effective date—2002 c 289: See notes following RCW 43.43.753.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Intent—2001 c 10: "It is the intent of the legislature to incorporate into the reorganization of chapter 9.94A RCW adopted by chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the 2000 legislative session that did not take cognizance of the reorganization. In addition, it is the intent of the legislature to correct any additional incorrect cross-references and to simplify the codification of provisions within chapter 9.94A RCW.

The legislature does not intend to make, and no provision of this act may be construed as making, a substantive change in the sentencing reform act." [2001 c 10 § 1.]

(2012 Ed.)

Finding—Intent—2000 c 226: "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1.]

Drug offender options—Report: "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

Intent—1998 c 260: See note following RCW 9.94A.500.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1996 c 275: "The legislature finds that improving the supervision of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective supervision accomplishes many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers." [1996 c 275 § 1.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.506 Standard sentence ranges—Limitations.

The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(1) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(2) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(3) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021. [2011 1st sp.s. c 40 § 26.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.94A.507 Sentencing of sex offenders. (1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(31)(b), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to com-

munity custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440. [2008 c 231 § 33. Prior: 2006 c 124 § 3; (2006 c 124 § 2 expired July 1, 2006); 2006 c 122 § 5; (2006 c 122 § 4 expired July 1, 2006); 2005 c 436 § 2; 2004 c 176 § 3; prior: 2001 2nd sp.s. c 12 § 303. Formerly RCW 9.94A.712.]

Reviser's note: *(1) The reference to RCW 9.94A.030(31)(b) was apparently in error. The reference should be to RCW 9.94A.030(34)(b). RCW 9.94A.030 was subsequently amended by 2010 c 224 § 1 and by 2010 c 274 § 401, changing subsection (34) to subsection (35). RCW 9.94A.030 was subsequently amended by 2011 c 87 § 2, changing subsection (35) to subsection (36).

(2) This section was recodified pursuant to the direction found in section 56(4), chapter 231, Laws of 2008.

(3) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Expiration date—2006 c 124 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 124 § 4.]

Effective date—2006 c 124: See note following RCW 9.94A.030.

Effective date—2006 c 122 §§ 5 and 7: "Sections 5 and 7 of this act take effect July 1, 2006." [2006 c 122 § 9.]

Expiration date—2006 c 122 §§ 4 and 6: "Sections 4 and 6 of this act expire July 1, 2006." [2006 c 122 § 8.]

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.510 Table 1—Sentencing grid.

TABLE 1

Sentencing Grid

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVII Life Sentence without Parole/Death Penalty										
XV 23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m36y	40y		
240-320	250-333	261-347	271-361	281-374	291-388	312-416	338-450	370-493	411-548	
XIV 14y4m										
15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y		
123-220	134-234	144-244	154-254	165-265	175-275	195-295	216-316	257-357	298-397	

XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day. [2002 c 290 § 10. Prior: 2000 c 132 § 2; 2000 c 28 § 11; prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2. Formerly RCW 9.94A.310.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—1995 c 129: "(1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone

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who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes." [1995 c 129 § 1 (Initiative Measure No. 159).]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.94A.515 Table 2—Crimes included within each seriousness level (as amended by 2012 c 162).

TABLE 2
CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
	<u>Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)</u>
X	Child Molestation 1 (RCW 9A.44.083)
	Criminal Mistreatment 1 (RCW 9A.42.020)
	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
	Kidnapping 1 (RCW 9A.40.020)
	Leading Organized Crime (RCW 9A.82.060(1)(a))
	Malicious explosion 3 (RCW 70.74.280(3))
	Sexually Violent Predator Escape (RCW 9A.76.115)

- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
 Assault of a Child 2 (RCW 9A.36.130)
 Explosive devices prohibited (RCW 70.74.180)
 Hit and Run—Death (RCW 46.52.020(4)(a))
 Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 Malicious placement of an explosive 2 (RCW 70.74.270(2))
 Robbery 1 (RCW 9A.56.200)
 Sexual Exploitation (RCW 9.68A.040)
 (~~Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520))~~)
- VIII Arson 1 (RCW 9A.48.020)
 Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
 Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 Manslaughter 2 (RCW 9A.32.070)
 Promoting Prostitution 1 (RCW 9A.88.070)
 Theft of Ammonia (RCW 69.55.010)
 Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 Child Molestation 2 (RCW 9A.44.086)
 Civil Disorder Training (RCW 9A.48.120)
 Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
 Drive-by Shooting (RCW 9A.36.045)
 Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
 Introducing Contraband 1 (RCW 9A.76.140)
 Malicious placement of an explosive 3 (RCW 70.74.270(3))
 Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
 Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1))
 Use of a Machine Gun in Commission of a Felony (RCW 9A.41.225)
 Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
 Bribery (RCW 9A.68.010)
 Incest 1 (RCW 9A.64.020(1))
 Intimidating a Judge (RCW 9A.72.160)
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
 Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
 Theft of a Firearm (RCW 9A.56.300)
 Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
 Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
 Child Molestation 3 (RCW 9A.44.089)
 Criminal Mistreatment 2 (RCW 9A.42.030)
 Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
 Driving While Under the Influence (RCW 46.61.502(6))
 Extortion 1 (RCW 9A.56.120)
 Extortionate Extension of Credit (RCW 9A.82.020)
 Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 Incest 2 (RCW 9A.64.020(2))
 Kidnapping 2 (RCW 9A.40.030)
 Perjury 1 (RCW 9A.72.020)
 Persistent prison misbehavior (RCW 9.94.070)
 Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
 Possession of a Stolen Firearm (RCW 9A.56.310)
 Rape 3 (RCW 9A.44.060)
 Rendering Criminal Assistance 1 (RCW 9A.76.070)
 Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
 Sexually Violating Human Remains (RCW 9A.44.105)
 Stalking (RCW 9A.46.110)
 Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
 Assault 2 (RCW 9A.36.021)
 Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
 Assault by Watercraft (RCW 79A.60.060)
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 Cheating 1 (RCW 9A.46.1961)
 Commercial Bribery (RCW 9A.68.060)
 Counterfeiting (RCW 9.16.035(4))
 Endangerment with a Controlled Substance (RCW 9A.42.100)
 Escape 1 (RCW 9A.76.110)
 Hit and Run—Injury (RCW 46.52.020(4)(b))
 Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
 Identity Theft 1 (RCW 9.35.020(2))

- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68(~~(A)~~) A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (*RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (RCW ~~((9A.44.130(1)(a)))~~ 9A.44.132)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)
- Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)

Malicious Mischief 2 (RCW 9A.48.080)
 Mineral Trespass (RCW 78.44.330)
 Possession of Stolen Property 2 (RCW 9A.56.160)
 Reckless Burning 1 (RCW 9A.48.040)
 Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
 Theft 2 (RCW 9A.56.040)
 Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
 Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
 Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
 Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
 Unlawful Possession of Payment Instruments (RCW 9A.56.320)
 Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
 Unlawful Production of Payment Instruments (RCW 9A.56.320)
 Unlawful Trafficking in Food Stamps (RCW 9.91.142)
 Unlawful Use of Food Stamps (RCW 9.91.144)
 Vehicle Prowl 1 (RCW 9A.52.095)

[2012 c 162 § 1. Prior: 2010 c 289 § 11; 2010 c 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 § 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

*Reviser's note: RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

9.94A.515 Table 2—Crimes included within each seriousness level (as amended by 2012 c 176).

TABLE 2
 CRIMES INCLUDED WITHIN EACH
 SERIOUSNESS LEVEL

XVI Aggravated Murder 1 (RCW 10.95.020)
 XV Homicide by abuse (RCW 9A.32.055)
 Malicious explosion 1 (RCW 70.74.280(1))

Murder 1 (RCW 9A.32.030)
 XIV Murder 2 (RCW 9A.32.050)
 Trafficking 1 (RCW 9A.40.100(1))
 XIII Malicious explosion 2 (RCW 70.74.280(2))
 Malicious placement of an explosive 1 (RCW 70.74.270(1))
 XII Assault 1 (RCW 9A.36.011)
 Assault of a Child 1 (RCW 9A.36.120)
 Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
 Rape 1 (RCW 9A.44.040)
 Rape of a Child 1 (RCW 9A.44.073)
 Trafficking 2 (RCW 9A.40.100(2))
 XI Manslaughter 1 (RCW 9A.32.060)
 Rape 2 (RCW 9A.44.050)
 Rape of a Child 2 (RCW 9A.44.076)
 X Child Molestation 1 (RCW 9A.44.083)
 Criminal Mistreatment 1 (RCW 9A.42.020)
 Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 Kidnapping 1 (RCW 9A.40.020)
 Leading Organized Crime (RCW 9A.82.060(1)(a))
 Malicious explosion 3 (RCW 70.74.280(3))
 Sexually Violent Predator Escape (RCW 9A.76.115)
 IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
 Assault of a Child 2 (RCW 9A.36.130)
 Explosive devices prohibited (RCW 70.74.180)
 Hit and Run—Death (RCW 46.52.020(4)(a))
 Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 Malicious placement of an explosive 2 (RCW 70.74.270(2))
 Robbery 1 (RCW 9A.56.200)
 Sexual Exploitation (RCW 9.68A.040)
 Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
 VIII Arson 1 (RCW 9A.48.020)
 Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
 Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 Manslaughter 2 (RCW 9A.32.070)
 Promoting Prostitution 1 (RCW 9A.88.070)
 Theft of Ammonia (RCW 69.55.010)
 Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
 VII Burglary 1 (RCW 9A.52.020)
 Child Molestation 2 (RCW 9A.44.086)
 Civil Disorder Training (RCW 9A.48.120)
 Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))

- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Pre-emption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9A.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Driving While Under the Influence (RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9A.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))

- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
- Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (*RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (~~(RCW 9A.44.130(1)(a))~~) (RCW 9A.44.132(1)(b))
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)
- Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))

Taking Motor Vehicle Without Permission 2
(RCW 9A.56.075)

Theft 2 (RCW 9A.56.040)

Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))

Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)

Unlawful Fish and Shellfish Catch Accounting
(RCW 77.15.630(3)(b))

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Possession of Fictitious Identification (RCW 9A.56.320)

Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)

Unlawful Possession of Payment Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)

Unlawful Production of Payment Instruments (RCW 9A.56.320)

Unlawful Release of Deleterious Exotic Wildlife
(RCW 77.15.250(2)(b))

Unlawful Trafficking in Food Stamps (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW 9.91.144)

Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))

Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3))

Vehicle Prowl 1 (RCW 9A.52.095)

Violating Commercial Fishing Area or Time 1
(RCW 77.15.550(3)(b))

[2012 c 176 § 3. Prior: 2010 c 289 § 11; 2010 c 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 § 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) RCW 9.94A.515 was amended twice during the 2012 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—2008 c 108: See RCW 19.144.005.

(2012 Ed.)

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—2004 c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 176 § 8.]

Effective date—2004 c 176: "Sections 2 through 6 of this act take effect July 1, 2005." [2004 c 176 § 9.]

Expiration date—2004 c 94 § 2: "Section 2 of this act expires July 1, 2004." [2004 c 94 § 8.]

Severability—Effective dates—2004 c 94: See notes following RCW 9.61.260.

Effective date—2003 c 335 § 5: "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

Expiration date—2003 c 335 § 4: "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

Effective date—2003 c 283 § 33: "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

Expiration date—2003 c 283 § 32: "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Effective date—2003 c 267 § 3: "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

Expiration date—2003 c 267 § 2: "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

Effective date—2003 c 250 § 14: "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

Expiration date—2003 c 250 § 13: "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

Severability—2003 c 250: See note following RCW 48.01.080.

Effective date—2003 c 119 § 8: "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

Expiration date—2003 c 119 § 7: "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2003 c 52 § 4: "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

Expiration date—2003 c 52 § 3: "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 290 §§ 7-11 and 14-23: "Sections 7 through 11 and 14 through 23 of this act take effect July 1, 2003." [2003 c 379 § 10; 2002 c 290 § 31.]

Effective date—2002 c 290 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2002, and apply to crimes committed on or after July 1, 2002." [2002 c 290 § 29.]

Expiration date—2002 c 290 § 2: "Section 2 of this act expires July 1, 2003." [2003 c 379 § 9; 2002 c 290 § 30.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—2002 c 134: See note following RCW 69.50.440.

Effective date—2002 c 133: See note following RCW 69.55.010.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—Effective dates—1994 sp.s. c 7: See notes following RCW 43.70.540.

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Additional notes found at www.leg.wa.gov

9.94A.517 Table 3—Drug offense sentencing grid.

(1)

TABLE 3

DRUG OFFENSE SENTENCING GRID

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9 or more
III	51 to 68 months	68+ to 100 months	100+ to 120 months
II	12+ to 20 months	20+ to 60 months	60+ to 120 months
I	0 to 6 months	6+ to 18 months	12+ to 24 months

References to months represent the standard sentence ranges. 12+ equals one year and one day.

(2) The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under RCW 2.28.170.

(3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment. [2002 c 290 § 8.]

Intent—2002 c 290: "It is the intent of the legislature to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced. The legislature intends that sentences for drug offenses accurately reflect the adverse impact of substance abuse and addiction on public safety, that the public must have protection from violent offenders, and further intends that such sentences be based on policies that are supported by research and public policy goals established by the legislature." [2002 c 290 § 1.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

9.94A.518 Table 4—Drug offenses seriousness level.

TABLE 4

DRUG OFFENSES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- III Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under *RCW 9.94A.602
Controlled Substance Homicide (RCW 69.50.415)

- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Involving a minor in drug dealing (RCW 69.50.4015)
- Manufacture of methamphetamine (RCW 69.50.401(2)(b))
- Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (**RCW 69.50.440)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- II Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.4012)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f))
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(2) (c) through (e))

Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))

I Forged Prescription (RCW 69.41.020)

Forged Prescription for a Controlled Substance (RCW 69.50.403)

Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c))

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013)

Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013)

Unlawful Use of Building for Drug Purposes (RCW 69.53.010)

[2003 c 53 § 57; 2002 c 290 § 9.]

Reviser's note: *(1) RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

***(2) cf. 2002 c 134 § 1.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

9.94A.520 Offense seriousness level. The offense seriousness level is determined by the offense of conviction. [1990 c 3 § 703; 1983 c 115 § 6. Formerly RCW 9.94A.350.]

Additional notes found at www.leg.wa.gov

9.94A.525 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment

and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the

highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point

for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a

motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense;

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence. [2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 § 3. Prior: 2007 c 199 § 8; 2007 c 116 § 1; prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Application—2008 c 231 §§ 2 and 3: See note following RCW 9.94A.500.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2007 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2002 c 290 §§ 2 and 3: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Application—2002 c 107: See notes following RCW 9.94A.030.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

9.94A.530 Standard sentence range. (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for other adjustments as specified in RCW 9.94A.533 shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537. On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.

(3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in RCW 9.94A.537. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.535(3)(d), (e), (g), and (h). [2008 c 231 § 4; 2005 c 68 § 2; 2002 c 290 § 18; 2000 c 28 § 12; 1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8. Formerly RCW 9.94A.370.]

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.533 Adjustments to standard sentences. (1)

The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting,

theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession

of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. All enhancements under this subsection shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based

on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard

sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. [2012 c 42 § 3; 2011 c 293 § 9; 2009 c 141 § 2. Prior: 2008 c 276 § 301; 2008 c 219 § 3; 2007 c 368 § 9; prior: 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Short title—2008 c 219: See note following RCW 9.94A.834.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2006 c 123: "This act takes effect July 1, 2006." [2006 c 123 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

9.94A.535 Departures from the guidelines. The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW

(VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030. [2011 c 87 § 1. Prior: 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; prior: 2008 c 276 § 303; 2008 c 233 § 9; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4; prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2010 c 9: See note following RCW 69.50.315.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Captions not law—Severability—2007 c 377: See RCW 19.290.900 and 19.290.901.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.537 Aggravating circumstances—Sentences above standard range. (1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence. [2007 c 205 § 2; 2005 c 68 § 4.]

Intent—2007 c 205: "In *State v. Pillatos*, 150 P.3d 1130 (2007), the Washington supreme court held that the changes made to the sentencing

reform act concerning exceptional sentences in chapter 68, Laws of 2005 do not apply to cases where the trials had already begun or guilty pleas had already been entered prior to the effective date of the act on April 15, 2005. The legislature intends that the superior courts shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing." [2007 c 205 § 1.]

Effective date—2007 c 205: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2007]." [2007 c 205 § 3.]

Intent—2005 c 68: "The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

Severability—2005 c 68: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 68 § 6.]

Effective date—2005 c 68: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 68 § 7.]

9.94A.540 Mandatory minimum terms. (1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than sixty months.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence

from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under *RCW 9.94A.728(4).

(3)(a) Subsection (1) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005. [2005 c 437 § 2; 2001 2nd sp.s. c 12 § 315; 2000 c 28 § 7. Formerly RCW 9.94A.590.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, changing subsection (4) to subsection (3).

Findings—Intent—2005 c 437: "(1) The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.

(2) The legislature intends to eliminate the application of mandatory minimum sentences under RCW 9.94A.540 to juveniles tried as adults, and to continue to apply all other adult sentencing provisions to juveniles tried as adults." [2005 c 437 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.550 Fines. Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

[2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.94A.555 Findings and intent—1994 c 1. (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process. [1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.392.]

Additional notes found at www.leg.wa.gov

9.94A.561 Offender notification and warning. A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties. [1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.393.]

Additional notes found at www.leg.wa.gov

9.94A.562 Court-ordered treatment—Required notices. When any person is convicted in a superior court, the judgment and sentence shall include a statement that if the offender is or becomes subject to court-ordered mental health or chemical dependency treatment, the offender must notify the department and the offender's treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by an offender who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety is not enhanced by the sharing of this offender's information. [2004 c 166 § 11.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.565 Governor's powers. (1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or

upon the death of the released offender. [1994 c 1 § 5 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.394.]

Additional notes found at www.leg.wa.gov

9.94A.570 Persistent offenders. Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under *RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree. [2000 c 28 § 6. Formerly RCW 9.94A.560.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsections (1) and (2) and changing subsections (3), (4), (6), (8), and (9) to subsections (2), (3), (5), (7), and (8), respectively.

Additional notes found at www.leg.wa.gov

9.94A.575 Power to defer or suspend sentences abolished—Exceptions. The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended. [2000 c 28 § 9; 1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13. Formerly RCW 9.94A.130.]

Additional notes found at www.leg.wa.gov

9.94A.580 Specialized training. The department is authorized to determine whether any person subject to the confines of a correctional facility would substantially benefit from successful participation in: (1) Literacy training, (2) employment skills training, or (3) educational efforts to identify and control sources of anger and, upon a determination that the person would, may require such successful participation as a condition for eligibility to obtain early release from the confines of a correctional facility.

The department shall adopt rules and procedures to administer this section. [1994 sp.s. c 7 § 533. Formerly RCW 9.94A.132.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.94A.585 Which sentences appealable—Procedure—Grounds for reversal—Written opinions. (1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to

be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted. [2002 c 290 § 19; 2000 c 28 § 10; 1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21. Formerly RCW 9.94A.210.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.589 Consecutive or concurrent sentences.

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases

involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively

include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months. [2002 c 175 § 7; 2000 c 28 § 14; 1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11. Formerly RCW 9.94A.400.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

9.94A.595 Anticipatory offenses. For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent. [2000 c 28 § 16; 1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12. Formerly RCW 9.94A.410.]

Additional notes found at www.leg.wa.gov

9.94A.599 Presumptive ranges that exceed the statutory maximum. If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. [1998 c 235 § 3; 1983 c 115 § 13. Formerly RCW 9.94A.420.]

9.94A.603 Felony alcohol violators—Treatment during incarceration—Conditions. (1) When sentencing an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the provisions of this chapter, shall order the offender to undergo alcohol or chemical dependency treatment services during incarceration. The offender shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available.

(2) The provisions under *RCW 46.61.5055 (8) and (9) regarding the suspension, revocation, or denial of the offender's license, permit, or nonresident privilege to drive shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

(3) The provisions under RCW 46.20.720 and *46.61.5055(5) regarding ignition interlock devices shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6). [2006 c 73 § 4.]

***Reviser's note:** RCW 46.61.5055 was amended by 2008 c 282 § 14, changing subsections (5), (8), and (9) to subsections (6), (9), and (10), respectively, effective January 1, 2009.

Effective date—2006 c 73: See note following RCW 46.61.502.

9.94A.607 Chemical dependency. (1) Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been con-

victed and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences. [1999 c 197 § 2. Formerly RCW 9.94A.129.]

Additional notes found at www.leg.wa.gov

9.94A.631 Violation of condition or requirement of sentence—Security searches authorized—Arrest by community corrections officer—Confinement in county jail.

(1) If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court or by the department. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

(2) For the safety and security of department staff, an offender may be required to submit to pat searches, or other limited security searches, by community corrections officers, correctional officers, and other agency approved staff, without reasonable cause, when in or on department premises, grounds, or facilities, or while preparing to enter department premises, grounds, facilities, or vehicles. Pat searches of offenders shall be conducted only by staff who are the same gender as the offender, except in emergency situations.

(3) A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court, local law enforcement, or local prosecution for consideration of new charges. The community corrections officer's report shall serve as the notice that the department will hold the offender for not more than three days from the time of such notice for the new crime, except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first. This does not affect the department's authority under RCW 9.94A.737.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court or authorized department staff, pursuant to a written order. [2012 1st sp.s. c 6 § 1; 2009 c 390 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2012." [2012 1st sp.s. c 6 § 15.]

Implementation—2012 1st sp.s. c 6: "(1)(a) Research shows that traditional mechanisms of surveillance-based supervision and sanctioning are

ineffective in reducing recidivism or improving public safety. The legislature is persuaded by recent studies showing that swift and certain sanctions, in combination with treatment-based interventions that address chemical dependency and criminogenic behaviors, are a more effective and efficient use of public resources to affect future crime.

(b) Notwithstanding, this is a new approach for Washington. It is imperative to the success of the state's system of offender supervision that the department of corrections be vigilant in:

(i) Monitoring the quality and consistency of applying swift and certain sanctions across the state;

(ii) Ensuring that sanctions are commensurate with identified behaviors and, to the extent possible, produce satisfactory results;

(iii) Applying evidence-based treatment and evaluation principles to address offenders' criminogenic and chemical dependency needs and therefore pairing the offender with the appropriate treatment; and

(iv) Maintaining good relations and open communication with law enforcement to assist in identifying offenders that pose the greatest risk to public safety.

(2) In implementing the provisions of this act, the department of corrections is directed to:

(a) Form stakeholder groups, that may include but are not limited to local community corrections officers, law enforcement, prosecuting attorneys, superior court judges, chemical dependency treatment and other community providers, and victim advocates;

(b) Within available resources, provide inpatient or outpatient chemical dependency treatment to offenders initially assessed as in need of treatment based on an evaluation of the offender's needs by a certified staff or chemical dependency provider utilizing evidence-based tools for evaluation;

(c) Perform outreach to the criminal justice training commission and local law enforcement agencies to ensure law enforcement is informed of changes in procedures for holding offenders pending the filing of charges for a new crime and establish ongoing channels of communication with local law enforcement for conveying information about individual offenders who have committed new crimes;

(d) Survey community corrections officers on a periodic basis to gather input and suggestions.

(3) The department shall report to the governor, appropriate committees of the legislature, and the stakeholder groups as identified in subsection (2)(a) of this section on its progress and activities in implementing this act, steps taken to improve the efficacy of chemical dependency treatment, evidence of outcomes achieved as reported by providers through submission of performance measure data, and including any recommended changes in legislation, no later than December 1, 2012, and December 1, 2013.

(4) This section expires December 31, 2013." [2012 1st sp.s. c 6 § 11.]

Application—2012 1st sp.s. c 6: "This act applies retroactively and prospectively regardless of the date of an offender's underlying offense." [2012 1st sp.s. c 6 § 12.]

Additional notes found at www.leg.wa.gov

9.94A.633 Violation of condition or requirement—Offender charged with new offense—Sanctions—Procedures. (1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to sixty days' confinement for each violation or by the department with up to thirty days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in

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community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the offender may be sanctioned in accordance with that section.

(d) If the offender was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(e) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(f) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an offender who is charged with a new felony offense may be suspended and the offender placed in total confinement pending disposition of the new criminal charges if:

(a) The offender is on parole pursuant to RCW 9.95.110(1); or

(b) The offender is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state. [2012 1st sp.s. c 6 § 2. Prior: 2010 c 258 § 1; 2010 c 224 § 12; 2009 c 375 § 12; 2009 c 28 § 7; 2008 c 231 § 15.]

Effective date—2012 1st sp.s. c 6 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 1st sp.s. c 6 § 14.]

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Application—2010 c 258 § 1: "Section 1 of this act applies to all offenders who committed their crimes before, on, or after June 10, 2010." [2010 c 258 § 2.]

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.6331 Sanctions—Where served. (1) If a sanction of confinement is imposed by the court, the following applies:

(a) If the sanction was imposed pursuant to RCW 9.94A.633(1), the sanction shall be served in a county facility.

(b) If the sanction was imposed pursuant to RCW 9.94A.633(2), the sanction shall be served in a state facility.

(2) If a sanction of confinement is imposed by the department, and if the offender is an inmate as defined by RCW 72.09.015, no more than eight days of the sanction, including any credit for time served, may be served in a county facility. The balance of the sanction shall be served in a state facility. In computing the eight-day period, weekends and holidays shall be excluded. The department may negotiate with local correctional authorities for an additional period of detention.

(3) If a sanction of confinement is imposed by the board, it shall be served in a state facility.

(4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served in a county facility.

(5) As used in this section, "county facility" means a facility operated, licensed, or utilized under contract by the county, and "state facility" means a facility operated, licensed, or utilized under contract by the state. [2008 c 231 § 17.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.6332 Sanctions—Which entity imposes. The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(5) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

(6) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333. [2010 c 224 § 11; 2009 c 375 § 14; 2009 c 28 § 8; 2008 c 231 § 18.]

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.6333 Sanctions—Modification of sentence—Noncompliance hearing. (1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the conditions or requirements of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in RCW 9.94A.633(1). Alternatively, the court may:

(i) Convert a term of partial confinement to total confinement;

(ii) Convert community restitution obligation to total or partial confinement; or

(iii) Convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with a mental health status evaluation and/or outpatient mental health treatment, the court shall seek a recommendation from the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(3) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

(4) Nothing in this section prohibits the filing of escape charges if appropriate. [2008 c 231 § 19.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Issuance, effect of no-contact order—Obligations, counseling after discharge. (1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sen-

tencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2)(a) For purposes of this subsection (2), a no-contact order is not a requirement of the offender's sentence. An offender who has completed all requirements of the sentence, including any and all legal financial obligations, is eligible for a certificate of discharge even if the offender has an existing no-contact order that excludes or prohibits the offender from having contact with a specified person or business or coming within a set distance of any specified location.

(b) In the case of an eligible offender who has a no-contact order as part of the judgment and sentence, the offender may petition the court to issue a certificate of discharge and a separate no-contact order by filing a petition in the sentencing court and paying the appropriate filing fee associated with the petition for the separate no-contact order. This filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact order separate from the judgment and sentence.

(i)(A) The court shall issue a certificate of discharge and a separate no-contact order under this subsection (2) if the court determines that the offender has completed all requirements of the sentence, including all legal financial obligations. The court shall reissue the no-contact order separately under a new civil cause number for the remaining term and under the same conditions as contained in the judgment and sentence.

(B) The clerk of the court shall send a copy of the new no-contact order to the individuals protected by the no-contact order, along with an explanation of the reason for the change, if there is an address available in the court file. If no address is available, the clerk of the court shall forward a copy of the order to the prosecutor, who shall send a copy of the no-contact order with an explanation of the reason for the change to the last known address of the protected individuals.

(ii) Whenever an order under this subsection (2) is issued, the clerk of the court shall forward a copy of the order to the appropriate law enforcement agency specified in the order on or before the next judicial day. The clerk shall also include a cover sheet that indicates the case number of the judgment and sentence that has been discharged. Upon receipt of the copy of the order and cover sheet, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in this system until it expires. The new order, and case number of the discharged judgment and sentence, shall be linked in the criminal intelligence information system for purposes of enforcing the no-contact order.

(iii) A separately issued no-contact order may be enforced under chapter 26.50 RCW.

(iv) A separate no-contact order issued under this subsection (2) is not a modification of the offender's sentence.

(3) Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. In addition, the court shall send to the department a copy of every signed certificate and order of discharge for offender sentences under the authority of the department. The county clerk shall enter into a database maintained by the administrator for the courts the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(4) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(5) The discharge shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(6) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has

been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(7) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [2009 c 325 § 3; 2009 c 288 § 2; 2007 c 171 § 1; 2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

Reviser's note: This section was amended by 2009 c 288 § 2 and by 2009 c 325 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2009 c 288: "The legislature finds that restoration of the right to vote and serve on a jury, for individuals who have satisfied every other obligation of their sentence, best serves to reintegrate them into society, even if a no-contact order exists. Therefore, the legislature further finds clarification of the existing statute is desirable to provide clarity to the courts that a certificate of discharge shall be issued, while the no-contact order remains in effect, once other obligations are completed." [2009 c 288 § 1.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Intent—2002 c 16: "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9.94A.640 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.637; (f) the offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the date the applicant was discharged under RCW 9.94A.637; or (g) the offense was a

class C felony described in RCW 46.61.502(6) or 46.61.504(6).

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [2012 c 183 § 3; 2006 c 73 § 8; 1987 c 486 § 7; 1981 c 137 § 23. Formerly RCW 9.94A.230.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2006 c 73: See note following RCW 46.61.502.

Additional notes found at www.leg.wa.gov

SENTENCING ALTERNATIVES

9.94A.650 First-time offender waiver. (1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2);

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses.

(3) The court may impose up to six months of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed one year.

(4) As a condition of community custody, in addition to any conditions authorized in RCW 9.94A.703, the court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work. [2011 1st sp.s. c 40 § 9; 2008 c 231 § 29; 2006 c 73 § 9; 2002 c 175 § 9; 2000 c 28 § 18.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

9.94A.655 Parenting sentencing alternative. (1) An offender is eligible for the parenting sentencing alternative if:

(a) The high end of the standard sentence range for the current offense is greater than one year;

(b) The offender has no prior or current conviction for a felony that is a sex offense or a violent offense;

(c) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(d) The offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court; and

(e) The offender has physical custody of his or her minor child or is a legal guardian or custodian with physical custody of a child under the age of eighteen at the time of the current offense.

(2) To assist the court in making its determination, the court may order the department to complete either a risk assessment report or a chemical dependency screening report as provided in RCW 9.94A.500, or both reports prior to sentencing.

(3) If the court is considering this alternative, the court shall request that the department contact the children's administration of the Washington state department of social and health services to determine if the agency has an open child welfare case or prior substantiated referral of abuse or neglect involving the offender or if the agency is aware of any substantiated case of abuse or neglect with a tribal child welfare agency involving the offender.

(a) If the offender has an open child welfare case, the department will provide the release of information waiver and request that the children's administration or the tribal child welfare agency provide a report to the court. The children's administration shall provide a report within seven business days of the request that includes, at the minimum, the following:

(i) Legal status of the child welfare case;

(ii) Length of time the children's administration has been involved with the offender;

(iii) Legal status of the case and permanent plan;

(iv) Any special needs of the child;

(v) Whether or not the offender has been cooperative with services ordered by a juvenile court under a child welfare case; and

(vi) If the offender has been convicted of a crime against a child.

(b) If a report is required from a tribal child welfare agency, the department shall attempt to obtain information that is similar to what is required for the report provided by the children's administration in a timely manner.

(c) If the offender does not have an open child welfare case with the children's administration or with a tribal child welfare agency but has prior involvement, the department will obtain information from the children's administration on the number and type of past substantiated referrals of abuse or neglect and report that information to the court. If the children's administration has never had any substantiated referrals or an open case with the offender, the department will inform the court.

(4) If the sentencing court determines that the offender is eligible for a sentencing alternative under this section and that the sentencing alternative is appropriate and should be imposed, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of twelve months of community custody. The court shall consider the offender's criminal history when determining if the alternative is appropriate.

(5) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate.

(b) The department may impose conditions as authorized in RCW 9.94A.704 that may include, but are not limited to:

(i) Parenting classes;

(ii) Chemical dependency treatment;

(iii) Mental health treatment;

(iv) Vocational training;

(v) Offender change programs;

(vi) Life skills classes.

(c) The department shall report to the court if the offender commits any violations of his or her sentence conditions.

(6) The department shall provide the court with quarterly progress reports regarding the offender's progress in required programming, treatment, and other supervision conditions. When an offender has an open child welfare case, the department will seek to coordinate services with the children's administration.

(7)(a) The court may bring any offender sentenced under this section back into court at any time during the period of community custody on its own initiative to evaluate the offender's progress in treatment, or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody, if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served in confinement under this section. [2010 c 224 § 2.]

9.94A.6551 Partial confinement as a part of a parenting program. For offenders not sentenced under RCW 9.94A.655, but otherwise eligible under this section, no more

than the final twelve months of the offender's term of confinement may be served in partial confinement as home detention as part of the parenting program developed by the department.

(1) The secretary may transfer an offender from a correctional facility to home detention in the community if it is determined that the parenting program is an appropriate placement and when all of the following conditions exist:

(a) The offender is serving a sentence in which the high end of the range is greater than one year;

(b) The offender has no current conviction for a felony that is a sex offense or a violent offense;

(c) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(d) The offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court;

(e) The offender:

(i) Has physical or legal custody of a minor child;

(ii) Has a proven, established, ongoing, and substantial relationship with his or her minor child that existed prior to the commission of the current offense; or

(iii) Is a legal guardian of a child that was under the age of eighteen at the time of the current offense; and

(f) The department determines that such a placement is in the best interests of the child.

(2) When the department is considering partial confinement as part of the parenting program for an offender, the department shall inquire of the individual and the children's administration with the Washington state department of social and health services whether the agency has an open child welfare case or prior substantiated referral for abuse or neglect involving the offender. If the children's administration or a tribal jurisdiction has an open child welfare case, the department will seek input from the children's administration or the involved tribal jurisdiction as to: (a) The status of the child welfare case; and (b) recommendations regarding placement of the offender and services required of the department and the court governing the individual's child welfare case. The department and its officers, agents, and employees are not liable for the acts of offenders participating in the parenting program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(3) All offenders placed on home detention as part of the parenting program shall provide an approved residence and living arrangement prior to transfer to home detention.

(4) While in the community on home detention as part of the parenting program, the department shall:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department determines is needed;

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements; and

(d) If the offender has an open child welfare case with the children's administration, collaborate and communicate with the identified social worker in the provision of services.

(5) The department has the authority to return any offender serving partial confinement in the parenting program to total confinement if the offender is not complying with sentence requirements. [2010 c 224 § 8.]

9.94A.660 Drug offender sentencing alternative—Prison-based or residential alternative. (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

- (i) Whether the offender suffers from drug addiction;
 - (ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;
 - (iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and
 - (iv) Whether the offender and the community will benefit from the use of the alternative.
- (b) The examination report must contain:
- (i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and
 - (ii) Recommended crime-related prohibitions and affirmative conditions.
- (6) When a court imposes a sentence of community custody under this section:
- (a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.
- (b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.
- (7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.
- (b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.
- (c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.
- (d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.
- (8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.
- (9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.
- (10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350. [2009 c 389 § 3; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

(2012 Ed.)

Effective date—2009 c 389 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 389 § 7.]

Expiration date—2009 c 389 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 389 § 9.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2006 c 73: See note following RCW 46.61.502.

Application—2005 c 460: "This act applies to sentences imposed on or after October 1, 2005." [2005 c 460 § 2.]

Effective date—2005 c 460: "This act takes effect October 1, 2005." [2005 c 460 § 3.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.662 Prison-based drug offender sentencing alternative. (1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if

the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. [2009 c 389 § 4.]

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

9.94A.664 Residential chemical dependency treatment-based alternative. (1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody. [2009 c 389 § 5.]

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

9.94A.670 Special sex offender sentencing alternative. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the

community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or

certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. [2009 c 28 § 9; 2008 c 231 § 31; 2006 c 133 § 1. Prior: 2004 c 176 § 4; 2004 c 38 § 9; 2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.680 Alternatives to total confinement. Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community restitution hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court may credit time served by the offender before the sentencing in an available county supervised community option and may authorize county jails to convert jail confinement to an available county supervised community option, may authorize the time spent in the community option to be reduced by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used. [2009 c 227 § 1; 2002 c 175 § 12; 1999 c 197 § 6. Prior: 1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9. Formerly RCW 9.94A.380.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

9.94A.685 Alien offenders. (1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee has reached an agreement with the immigration and customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order.

No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030.

(3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and customs enforcement agency for deportation. Upon the release of an offender to the immigration and customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect indefinitely.

(4) Upon arrest of an offender, the department may seek extradition as necessary and the offender may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

(5) Alien offenders released to the immigration and customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisions of this section apply to persons convicted before, on, or after April 29, 2011. [2011 c 206 § 1; 1993 c 419 § 1. Formerly RCW 9.94A.280.]

Effective date—2011 c 206: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2011]." [2011 c 206 § 4.]

(2012 Ed.)

9.94A.690 Work ethic camp program—Eligibility—Sentencing. (1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), a violation of the uniform controlled substances act, or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of community custody as authorized by RCW 9.94A.703; and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training. [2008 c 231 § 32; 2006 c 73 § 11; 2000 c 28 § 21; 1999 c 197 § 5; 1995 1st sp.s. c 19 § 20; 1993 c 338 § 4. Formerly RCW 9.94A.137.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2006 c 73: See note following RCW 46.61.502.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Findings—Intent—1993 c 338: See RCW 72.09.400.
Additional notes found at www.leg.wa.gov

SUPERVISION OF OFFENDERS IN THE COMMUNITY

9.94A.701 Community custody—Offenders sentenced to the custody of the department. (1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507;
or

(b) A serious violent offense.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;

(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000; or

(d) A felony violation of RCW 9A.44.132(1) (failure to register) that is the offender's first violation for a felony failure to register.

(4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(5) If an offender is sentenced under the special sex offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(7) If an offender is sentenced under the parenting sentencing alternative, the court shall impose a term of community custody as provided in RCW 9.94A.655.

(8) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

(9) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021. [2010 c 267 § 11; 2010 c 224 § 5; 2009 c 375 § 5; 2009 c 28 § 10; 2008 c 231 § 7.]

Reviser's note: This section was amended by 2010 c 224 § 5 and by 2010 c 267 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2010 c 267: See note following RCW 9A.44.128.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—2008 c 231: "The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 7 through 58 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision, except for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to August 1, 2009, to the extent that such application is constitutionally permissible.

This will effect a change for offenders who committed their crimes prior to the offender accountability act, chapter 196, Laws of 1999. These offenders will be ordered to a term of community custody rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's supervision will be as provided in current law. With the exception of this change, the legislature does not intend to make, and no provision of sections 7 through 58 of this act may be construed as making, a substantive change to the supervision provisions of the sentencing reform act." [2009 c 375 § 10; 2008 c 231 § 6.]

Application—2008 c 231 §§ 6-58: "(1) Sections 6 through 58 of this act apply to all sentences imposed or reimposed on or after August 1, 2009, for any crime committed on or after August 1, 2009.

(2) Sections 6 through 58 of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, for crimes committed prior to August 1, 2009, to the extent that such application is constitutionally permissible.

(3) To the extent that application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the sentence for such offender shall be governed by the law as it existed before August 1, 2009, or on such prior date as may be constitutionally required, notwithstanding any amendment or repeal of provisions of such law.

(4) If application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the judgment and sentence shall specify the particular sentencing provisions that will not apply to such offender. Whenever practical, the judgment and sentence shall use the terminology set out in this act.

(5) The sentencing guidelines commission shall prepare a summary of the circumstances under which application of sections 6 through 58 of this act is not constitutionally permissible. The summary should include recommendations of conditions that could be included in judgments and sentences in order to prevent unconstitutional application of the act. This summary shall be incorporated into the *Adult Sentencing Guidelines Manual*.

(6) Sections 6 through 58 of this act shall not affect the enforcement of any sentence that was imposed prior to August 1, 2009, unless the offender is resentenced after that date." [2008 c 231 § 55.]

Application of repealers—2008 c 231 § 57: "The repealers in section 57 of this act shall not affect the validity of any sentence that was imposed prior to August 1, 2009, or the authority of the department of corrections to supervise any offender pursuant to such sentence." [2008 c 231 § 58.]

Effective date—2008 c 231 §§ 6-60: "Sections 6 through 60 of this act take effect August 1, 2009." [2008 c 231 § 61.]

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.702 Community custody—Offenders sentenced for one year or less. (1) If an offender is sentenced to a term of confinement for one year or less for one of the following offenses, the court may impose up to one year of community custody:

(a) A sex offense;

(b) A violent offense;

(c) A crime against a person under RCW 9.94A.411;

(d) A felony violation of chapter 69.50 or 69.52 RCW, or an attempt, conspiracy, or solicitation to commit such a crime; or

(e) A felony violation of RCW 9A.44.132(1) (failure to register).

(2) If an offender is sentenced to a first-time offender waiver, the court may impose community custody as provided in RCW 9.94A.650. [2010 c 267 § 12; 2008 c 231 § 8.]

Application—2010 c 267: See note following RCW 9A.44.128.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.703 Community custody—Conditions. When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

(1) **Mandatory conditions.** As part of any term of community custody, the court shall:

(a) Require the offender to inform the department of court-ordered treatment upon request by the department;

(b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;

(c) If the offender was sentenced under RCW 9.94A.507 for an offense listed in RCW 9.94A.507(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone;

(d) If the offender was sentenced under RCW 9A.36.120, prohibit the offender from serving in any paid or volunteer capacity where he or she has control or supervision of minors under the age of thirteen.

(2) **Waivable conditions.** Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

(a) Report to and be available for contact with the assigned community corrections officer as directed;

(b) Work at department-approved education, employment, or community restitution, or any combination thereof;

(c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;

(d) Pay supervision fees as determined by the department; and

(e) Obtain prior approval of the department for the offender's residence location and living arrangements.

(3) **Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

(a) Remain within, or outside of, a specified geographical boundary;

(b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) Participate in crime-related treatment or counseling services;

(d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

(e) Refrain from consuming alcohol; or

(f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

(a) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(b)(i) In sentencing an offender convicted of an alcohol or drug-related traffic offense, the court shall require the offender to complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be forwarded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The offender shall pay all costs for any evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

(ii) For purposes of this section, "alcohol or drug-related traffic offense" means the following: Driving while under the influence as defined by RCW 46.61.502, actual physical control while under the influence as defined by RCW 46.61.504, vehicular homicide as defined by RCW 46.61.520(1)(a), vehicular assault as defined by RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

(iii) This subsection (4)(b) does not require the department of social and health services to add new treatment or assessment facilities nor affect its use of existing programs and facilities authorized by law. [2009 c 214 § 3; 2009 c 28 § 11; 2008 c 231 § 9.]

Reviser's note: This section was amended by 2009 c 28 § 11 and by 2009 c 214 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2009 c 214: "This act shall be known as the Eryk Woodruff public safety act of 2009." [2009 c 214 § 1.]

Effective date—2009 c 214: "This act takes effect August 1, 2009." [2009 c 214 § 4.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.704 Community custody—Supervision by the department—Conditions. (1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions

of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function. [2012 1st sp.s. c 6 § 3; 2009 c 375 § 6; 2009 c 28 § 12; 2008 c 231 § 10.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Implementation--Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.706 Community custody—Possession of firearms, ammunition, or explosives prohibited. (1) No offender sentenced to a term of community custody under the supervision of the department may own, use, or possess firearms, ammunition, or explosives. An offender's actual or constructive possession of firearms, ammunition, or explosives shall be reported to local law enforcement or local prosecution for consideration of new charges and subject to sanctions under RCW 9.94A.633 or 9.94A.737.

(2) For the purposes of this section:

(a) "Constructive possession" means the power and intent to control the firearm, ammunition, or explosives.

(b) "Explosives" has the same definition as in RCW 46.04.170.

(c) "Firearm" has the same definition as in RCW 9.41.010. [2012 1st sp.s. c 6 § 4; 2008 c 231 § 11.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.707 Community custody—Commencement—Conditions. (1) Community custody shall begin: (a) Upon completion of the term of confinement; or (b) at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court. [2009 c 375 § 7; 2008 c 231 § 12.]

Application—2009 c 375: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.708 Community custody—Mental health information—Access by department. (1) When an offender is under community custody, the community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(2) An offender under community custody who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department for the duration of his or her period of community custody. During any period of inpatient mental health treatment that falls within the period of community custody, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information. [2008 c 231 § 13.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.709 Community custody—Sex offenders—Conditions. (1) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions of community custody for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody.

(2) If a violation of a condition extended under this section occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(3) If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition. [2008 c 231 § 14.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.714 Community custody—Violations—Electronic monitoring program—Immunity from civil liability. (1) The department may work with the Washington asso-

ciation of sheriffs and police chiefs to establish and operate an electronic monitoring program for offenders who violate the terms of their community custody.

(2) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith. [2012 1st sp.s. c 6 § 5; 2008 c 231 § 16.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.716 Community custody—Violations—Arrest. (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation pursuant to RCW 9.94A.633.

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

(3) If an offender has been arrested by the department for a new felony offense while under community custody, the facts and circumstances of the conduct of the offender shall be reported by the community corrections officer to local law enforcement or local prosecution for consideration of new charges. The community corrections officer's report shall serve as notice that the department will hold the offender in total confinement for not more than three days from the time of such notice for the new crime, except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that

set forth in RCW 9.94A.631. [2012 1st sp.s. c 6 § 6; 2008 c 231 § 21.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.722 Court-ordered treatment—Required disclosures. When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief. [2004 c 166 § 9.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.723 Court-ordered treatment—Offender's failure to inform. An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions. [2004 c 166 § 7.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.725 Offender work crews. Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual

employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

- (1) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payment.
- (2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.
- (3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.
- (4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.
- (5) Other extenuating circumstances as determined by the court. [2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

Additional notes found at www.leg.wa.gov

9.94A.728 Release prior to expiration of sentence. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

- (1) An offender may earn early release time as authorized by RCW 9.94A.729;
- (2) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition

tion, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(3)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(iii) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time.

(e) Persistent offenders are not eligible for extraordinary medical placement;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community or no more than the final twelve months of the offender's term of confinement may be served in partial confinement as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(6) The governor may pardon any offender;

(7) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(8) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870; and

(9) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540. [2010 c 224 § 6. Prior: 2009 c 455 § 2; (2009 c 455 § 1 expired August 1, 2009); 2009 c 441 § 1; 2009 c 399 § 1; 2008 c 231 § 34; 2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1; prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992

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c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Effective date—2009 c 455 § 2: "Section 2 of this act takes effect August 1, 2009." [2009 c 455 § 5.]

Expiration date—2009 c 455 § 1: "Section 1 of this act expires August 1, 2009." [2009 c 455 § 6.]

Effective date—2009 c 441: "This act takes effect August 1, 2009." [2009 c 441 § 2.]

Effective date—2009 c 399: "This act takes effect August 1, 2009." [2009 c 399 § 2.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Severability—2003 c 379: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 50 § 4.]

Effective date—2002 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 50 § 5.]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

9.94A.7281 Legislative declaration—Earned release time not an entitlement. The legislature declares that the changes to the maximum percentages of earned release time in chapter 379, Laws of 2003 do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The legislature retains full control over the right to revise the percentages of earned release time

available to offenders at any time. This section applies to persons convicted on or after July 1, 2003. [2003 c 379 § 2.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.729 Earned release time—Risk assessments.

(1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for pre-sentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. The department may approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence.

(b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(c) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) Has no prior conviction for the offenses listed in (c)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.

(d) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(c) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(c) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan. The voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) For each offender who is the recipient of a rental voucher, the department shall include, concurrent with the data that the department otherwise obtains and records, the housing status of the offender for the duration of the offender's supervision.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2011 1st sp.s. c 40 § 4; 2010 c 224 § 7; 2009 c 455 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2009 c 455 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2009]." [2009 c 455 § 7.]

9.94A.731 Term of partial confinement, work release, home detention. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030 and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2009 c 28 § 13; 2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94A.734 Home detention—Conditions. (1) Home detention may not be imposed for offenders convicted of the following offenses, unless imposed as partial confinement in the department's parenting program under RCW 9.94A.6551:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not

otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [2010 c 224 § 9; 2007 c 199 § 9; 2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.94A.737 Community custody—Violations—Disciplinary proceedings—Structured violation process—

Sanctions. (1) If an offender is accused of violating any condition or requirement of community custody, the department shall address the violation behavior. The department may hold offender disciplinary proceedings not subject to chapter 34.05 RCW. The department shall notify the offender in writing of the violation process.

(2)(a) The offender's violation behavior shall determine the sanction the department imposes. The department shall adopt rules creating a structured violation process that includes presumptive sanctions, aggravating and mitigating factors, and definitions for low level violations and high level violations.

(b) After an offender has committed and been sanctioned for five low level violations, all subsequent violations committed by that offender shall automatically be considered high level violations.

(c)(i) The department must define aggravating factors that indicate the offender may present a current and ongoing foreseeable risk and which therefore, elevate an offender's behavior to a high level violation process.

(ii) The state and its officers, agents, and employees may not be held criminally or civilly liable for a decision to elevate or not to elevate an offender's behavior to a high level violation process under this subsection unless the state or its officers, agents, and employees acted with reckless disregard.

(3) The department may intervene when an offender commits a low level violation as follows:

(a) For a first low level violation, the department may sanction the offender to one or more nonconfinement sanctions.

(b) For a second or subsequent low level violation, the department may sanction the offender to not more than three days in total confinement.

(i) The department shall develop rules to ensure that each offender subject to a short-term confinement sanction is provided the opportunity to respond to the alleged violation prior to imposition of total confinement.

(ii) The offender may appeal the short-term confinement sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delivered to department staff, or postmarked, within seven days after the sanction is imposed.

(4) If an offender is accused of committing a high level violation, the department may sanction the offender to not more than thirty days in total confinement per hearing.

(a) The offender is entitled to a hearing prior to the imposition of sanctions; and

(b) The offender may be held in total confinement pending a sanction hearing. Prehearing time served must be credited to the offender's sanction time.

(5) If the offender's underlying offense is one of the following felonies and the violation behavior constitutes a new misdemeanor, gross misdemeanor or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires or until if a prosecuting attorney files new charges against the offender, whichever occurs first:

(a) Assault in the first degree, as defined in RCW 9A.36.011;

(b) Assault of a child in the first degree, as defined in RCW 9A.36.120;

(c) Assault of a child in the second degree, as defined in RCW 9A.36.130;

(d) Burglary in the first degree, as defined in RCW 9A.52.020;

(e) Child molestation in the first degree, as defined in RCW 9A.44.083;

(f) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

(g) Dealing in depictions of a minor engaged in sexually explicit conduct, as defined in RCW 9.68A.050;

(h) Homicide by abuse, as defined in RCW 9A.32.055;

(i) Indecent liberties with forcible compulsion, as defined in RCW 9A.44.100(1)(a);

(j) Indecent liberties with a person capable of consent, as defined in RCW 9A.44.100(1)(b);

(k) Kidnapping in the first degree, as defined in RCW 9A.40.020;

(l) Murder in the first degree, as defined in RCW 9A.32.030;

(m) Murder in the second degree, as defined in RCW 9A.32.050;

(n) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101;

(o) Rape in the first degree, as defined in RCW 9A.44.040;

(p) Rape in the second degree, as defined in RCW 9A.44.050;

(q) Rape of a child in the first degree, as defined in RCW 9A.44.073;

(r) Rape of a child in the second degree, as defined in RCW 9A.44.076;

(s) Robbery in the first degree, as defined in RCW 9A.56.200;

(t) Sexual exploitation of a minor, as defined in RCW 9.68A.040; or

(u) Vehicular homicide while under the influence of intoxicating liquor or any drug, as defined in RCW 46.61.520(1)(a).

(6) The department shall adopt rules creating hearing procedures for high level violations. The hearings are offender disciplinary proceedings and are not subject to chapter 34.05 RCW. The procedures shall include the following:

(a) The department shall provide the offender with written notice of the alleged violation and the evidence supporting it. The notice must include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision;

(b) Unless the offender waives the right to a hearing, the department shall hold a hearing, and shall record it electronically. For offenders not in total confinement, the department shall hold a hearing within fifteen business days, but not less than twenty-four hours, after written notice of the alleged violation. For offenders in total confinement, the department shall hold a hearing within five business days, but not less than twenty-four hours, after written notice of the alleged violation;

(c) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) receive a written summary of the reasons for the hearing officer's decision; and

(d) The sanction shall take effect if affirmed by the hearing officer. The offender may appeal the sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delivered to department staff, or post-marked, within seven days after the sanction was imposed. The appeals panel shall affirm, reverse, modify, vacate, or remand based on its findings. If a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community, then the panel will reverse, vacate, remand, or modify the sanction.

(7) For purposes of this section, the hearings officer may not rely on unconfirmed or unconfirmable allegations to find that the offender violated a condition.

(8) Hearing officers shall report through a chain of command separate from that of community corrections officers. [2012 1st sp.s. c 6 § 7; 2008 c 231 § 20; (2009 c 375 § 13 expired August 1, 2009); 2007 c 483 § 305; 2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Finding—Intent—2005 c 435: "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to crim-

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inal justice system personnel, policymakers, and the general public.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnant.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.740 Community custody violators—Arrest, detention, financial responsibility. (1) When an offender is arrested pursuant to RCW 9.94A.631 or 9.94A.716, the department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440, until the department releases its detainee.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section.

(3) For confinement sanctions imposed by the department under RCW 9.94A.670, the local correctional facility shall be financially responsible.

(4) The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody.

(5) Except as provided in subsections (1) and (2) of this section, the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate for confinement sanctions imposed by the department pursuant to RCW 9.94A.737. If the department's use of bed space in local correctional facilities of any county for such confinement sanctions exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs. [2012 1st sp.s. c 6 § 8; 2008 c 231 § 22; 1999 c 196 § 9; 1996 c 275 § 4; 1988 c 153 § 5. Formerly RCW 9.94A.207.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.745 Interstate compact for adult offender supervision. The interstate compact for adult offender supervision is hereby entered into and enacted into law with

all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article IV of this compact.

(n) "Victim" means a person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of criminal conduct against the person or a member of the person's family.

ARTICLE III THE COMPACT COMMISSION

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV THE STATE COUNCIL

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims' groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be

determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(c) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) To establish and maintain offices;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) To establish a budget and make expenditures and levy dues as provided in article X of this compact;

(n) To sue and be sued;

(o) To provide for dispute resolution among compacting states;

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(r) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity;

(s) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI
ORGANIZATION AND OPERATION OF THE
INTERSTATE COMMISSION

(a) **Bylaws.** The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: PROVIDED, That subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff

as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

(d) **Qualified immunity, defense and indemnification.** (1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That nothing in this subsection (d)(1) shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII
ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner

from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "government in sunshine act," 5 U.S.C. Sec. 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

- (1) Relate solely to the interstate commission's internal personnel practices and procedures;
- (2) Disclose matters specifically exempted from disclosure by statute;
- (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
- (4) Involve accusing any person of a crime, or formally censuring any person;
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (6) Disclose investigatory records compiled for law enforcement purposes;
- (7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;
- (8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;
- (9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly

certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C. Sec. 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

- (1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;
- (2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;
- (3) Provide an opportunity for an informal hearing; and
- (4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

- (1) Notice to victims and opportunity to be heard;
- (2) Offender registration and compliance;
- (3) Violations/returns;

- (4) Transfer procedures and forms;
 - (5) Eligibility for transfer;
 - (6) Collection of restitution and fees from offenders;
 - (7) Data collection and reporting;
 - (8) The level of supervision to be provided by the receiving state;
 - (9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;
 - (10) Mediation, arbitration and dispute resolution.
- (f) The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.
- (g) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII(b) of this compact.

ARTICLE X FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every

compacting state: PROVIDED, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. [2001 c 35 § 2.]

***Reviser's note:** The interstate compact was enacted and signed into law by the thirty-fifth state on June 19, 2002.

Additional notes found at www.leg.wa.gov

9.94A.74501 State council. (1) The department of corrections shall serve as the state council for interstate adult offender supervision as required under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The department of corrections may form a subcommittee, including members representing the legislative, judicial, and executive branches of state government, and victims' groups to perform the functions of the state council. Any such subcommittee shall include representation of both houses and at least two of the four largest political caucuses in the legislature.

(2) The department or a subcommittee if formed for that purpose, shall:

(a) Review department operations and procedures under RCW 9.94A.745, and recommend policies to the compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the interstate commission created under article III of RCW 9.94A.745; and

(b) Report annually to the legislature on interstate supervision operations and procedures under RCW 9.94A.745, including recommendations for policy changes.

(3) The secretary shall appoint an employee of the department, or a subcommittee if formed for that purpose shall appoint one of its members, to represent the state at meetings of the interstate commission created under article III of RCW 9.94A.745 when the compact administrator cannot attend. [2011 1st sp.s. c 40 § 31; 2001 c 35 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.94A.74502 Compact administrator. The secretary of corrections, or an employee of the department designated by the secretary, shall serve as the compact administrator under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The legislature intends that the compact administrator, representing the state on the interstate commission created under article III of RCW 9.94A.745, will take an active role to assure that the interstate compact operates to protect the safety of the people and communities of the state. [2001 c 35 § 4.]

9.94A.74503 Other compacts and agreements—Withdrawal from current compact. (1) The state shall continue to meet its obligations under RCW 9.95.270, the interstate compact for the supervision of parolees and probationers, to those states which continue to meet their obliga-

tions to the state of Washington under the interstate compact for the supervision of parolees and probationers, and have not approved the interstate compact for adult offender supervision after July 1, 2001.

(2) If a state withdraws from the interstate compact for adult offender supervision under article XII(a) of RCW 9.94A.745, the state council for interstate adult offender supervision created by RCW 9.94A.74501 shall seek to negotiate an agreement with the withdrawing state fulfilling the purposes of RCW 9.94A.745, subject to the approval of the legislature.

(3) Nothing in chapter 35, Laws of 2001 limits the secretary's authority to enter into agreements with other jurisdictions for supervision of offenders. [2001 c 35 § 5.]

9.94A.74504 Supervision of transferred offenders—Processing transfer applications. (1) The department may supervise nonfelony offenders transferred to Washington pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and shall supervise these offenders according to the provisions of this chapter.

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders requesting transfer of supervision out-of-state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and may charge offenders a reasonable fee for processing the application.

(3) The department shall adopt a rule prescribing the amount of the interstate transfer application fee. [2011 1st sp.s. c 40 § 14; 2005 c 400 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Application—2005 c 400: "This act applies to offenders sentenced before, on, or after July 1, 2005." [2005 c 400 § 8.]

Effective date—2005 c 400: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 400 § 9.]

9.94A.74505 Review of obligations under compact—Report to legislature. (1) The department shall identify the states from which it receives adult offenders who need supervision and examine the feasibility and cost of establishing memoranda of understanding with the states that send the highest number of offenders for supervision to Washington state with the goal of achieving more balanced and equitable obligations under the interstate compact for adult offender supervision.

(2) At the next meeting of the interstate compact commission, Washington's representatives on the commission shall seek a resolution by the commission regarding:

(a) Any inequitable distribution of costs, benefits, and obligations affecting Washington under the interstate compact; and

(b) The scope of the mandatory acceptance policy and the authority of the receiving state to determine when it is no longer able to supervise an offender.

(3) The department shall examine the feasibility and cost of withdrawal from the interstate compact for adult offender supervision.

(4) The department shall report to the legislature no later than December 1, 2010, regarding:

(a) The development of memoranda of understanding with states that send the highest numbers of offenders to Washington state for supervision;

(b) The outcome of the resolution process with the interstate commission; and

(c) The feasibility and cost of withdrawal from the interstate compact for adult offender supervision. [2010 c 258 § 4.]

Purpose—2010 c 258 § 4: "The legislature has determined that it is necessary to examine patterns related to the exchange of out-of-state offenders needing supervision. The examination must assess the past action and behavior of other states that send offenders to the state of Washington for supervision to assure that the interstate compact for adult offender supervision operates to protect the safety of the people and communities of Washington and other individual states." [2010 c 258 § 3.]

Effective date—2010 c 258 §§ 3 and 4: "Sections 3 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2010." [2010 c 258 § 5.]

RESTITUTION AND LEGAL FINANCIAL OBLIGATIONS

9.94A.750 Restitution. This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend

jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has

been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2003 c 379 § 15; 2000 c 28 § 32. Prior: 1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14. Formerly RCW 9.94A.140.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.753 Restitution—Application dates. This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses,

but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The

offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2003 c 379 § 16. Prior: 2000 c 226 § 3; 2000 c 28 § 33; prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10. Formerly RCW 9.94A.142.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

(2012 Ed.)

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.760 Legal financial obligations. (1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies avail-

able to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly

payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condi-

tion or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

(11)(a) The administrative office of the courts shall mail individualized periodic billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(b) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(d) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations. [2011 c 106 § 3; 2008 c 231 § 35; 2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

Finding—2011 c 106: See note following RCW 10.82.090.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Purpose—2003 c 379 §§ 13-27: "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in partic-

ular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.7601 "Earnings," "disposable earnings," and "obligee" defined. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned. [1991 c 93 § 1. Formerly RCW 9.94A.200005.]

Additional notes found at www.leg.wa.gov

9.94A.7602 Legal financial obligation—Notice of payroll deduction—Issuance and content. (1) The department may issue a notice of payroll deduction in a criminal action if:

(a) The court at sentencing orders its immediate issuance; or

(b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:

(i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or

(ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.

(2) The notice of payroll deduction is to be in writing and include:

(a) The name, social security number, and identifying court case number of the offender/employee;

(b) The amount to be deducted from the offender/employee's disposable earnings each month, or alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;

(c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.

(4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.760 and 9.94A.7601 through 9.94A.761. [1991 c 93 § 3. Formerly RCW 9.94A.200010.]

Additional notes found at www.leg.wa.gov

9.94A.7603 Legal financial obligations—Payroll deductions—Maximum amounts withheld, apportionment. (1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

(2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally. [1991 c 93 § 4. Formerly RCW 9.94A.200015.]

Additional notes found at www.leg.wa.gov

9.94A.7604 Legal financial obligations—Notice of payroll deduction—Employer or entity rights and responsibilities. (1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1991 c 93 § 5. Formerly RCW 9.94A.200020.]

Additional notes found at www.leg.wa.gov

9.94A.7605 Motion to quash, modify, or terminate payroll deduction—Grounds for relief. (1) The offender subject to a payroll deduction under this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one month.

(2) Satisfactions by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction. If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of payroll deduction should remain in effect. [1991 c 93 § 6. Formerly RCW 9.94A.200025.]

Additional notes found at www.leg.wa.gov

9.94A.7606 Legal financial obligations—Order to withhold and deliver—Issuance and contents. (1) The department or county clerk may issue to any person or entity, except to the department, an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department or county clerk has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department or county clerk has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department or county clerk shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver. [2011 c 106 § 5; 1991 c 93 § 7. Formerly RCW 9.94A.200030.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7607 Legal financial obligations—Order to withhold and deliver—Duties and rights of person or entity served. (1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

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(b) Provide further and additional answers when requested by the department or county clerk.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department or county clerk of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or other employment arrangement, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department or county clerk is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding. [2011 c 106 § 6; 1991 c 93 § 8. Formerly RCW 9.94A.200035.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7608 Legal financial obligations—Financial institutions—Service on main office or branch, effect—Collection actions against community bank account,

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court hearing. An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department or county clerk initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first-class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department or the superior court contesting the withholding of his or her interest in the account or funds. The department or county clerk shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department or county clerk is authorized to proceed with the collection action. [2011 c 106 § 7; 1991 c 93 § 9. Formerly RCW 9.94A.200040.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7609 Legal financial obligations—Notice of debt—Service or mailing—Contents—Action on, when.

(1) The department or county clerk may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

(6) The department or county clerk shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender. [2011 c 106 § 8; 1991 c 93 § 10. Formerly RCW 9.94A.200045.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.761 Legal financial obligations—Exemption from notice of payroll deduction or order to withhold and deliver.

Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld. [1991 c 93 § 11. Formerly RCW 9.94A.200050.]

Additional notes found at www.leg.wa.gov

9.94A.7701 Legal financial obligations—Wage assignments—Petition or motion.

A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion

seeking the wage assignment. [1989 c 252 § 9. Formerly RCW 9.94A.2001.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7702 Legal financial obligations—Wage assignments—Answer. Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 9.94A.7701, the court shall issue a wage assignment order as provided in RCW 9.94A.7704 and including the information required in RCW 9.94A.7701, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 9.94A.7706 within twenty days after service of the order upon the employer. [1989 c 252 § 10. Formerly RCW 9.94A.2002.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7703 Legal financial obligations—Wage assignments—Amounts to be withheld. (1) The wage assignment order in RCW 9.94A.7702 shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the non-exempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute. [1989 c 252 § 11. Formerly RCW 9.94A.2003.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7704 Legal financial obligations—Wage assignments—Rules. The department shall develop a form and adopt rules for the wage assignment order. [1989 c 252 § 12. Formerly RCW 9.94A.2004.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7705 Legal financial obligations—Wage assignments—Employer responsibilities. (1) An employer

upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 9.94A.7703. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible. [1989 c 252 § 13. Formerly RCW 9.94A.2005.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7706 Legal financial obligations—Wage assignments—Form and rules. The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer. [1989 c 252 § 14. Formerly RCW 9.94A.2006.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7707 Legal financial obligations—Wage assignments—Service. (1) Service of the wage assignment order on the employer is invalid unless it is served with five

answer forms in substantial conformance with RCW 9.94A.7706, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy. [1989 c 252 § 15. Formerly RCW 9.94A.2007.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7708 Legal financial obligations—Wage assignments—Hearing—Scope of relief. In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfactions by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order. [1989 c 252 § 16. Formerly RCW 9.94A.2008.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7709 Legal financial obligations—Wage assignments—Recovery of costs, attorneys' fees. In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. [1989 c 252 § 17. Formerly RCW 9.94A.2009.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.772 Legal financial obligations—Monthly payment, starting dates—Construction. Notwithstanding

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any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment. [2004 c 121 § 4; 2003 c 379 § 22.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

9.94A.775 Legal financial obligations—Termination of supervision—Monitoring of payments. If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of community custody, or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of community custody, the department shall notify the administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section. [2008 c 231 § 36; 2003 c 379 § 17.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

9.94A.777 Legal financial obligations—Defendants with mental health conditions. (1) Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation. [2010 c 280 § 6.]

SEX OFFENDER TREATMENT

9.94A.780 Offender supervision intake fees. (1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the supervision intake fee, pre-

scribed under subsection (2) of this section, which shall be considered as payment or part payment of the cost of establishing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the intake fee based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such a payment.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the intake fee constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The supervision intake fee shall be imposed after the determination of eligibility for supervision has been completed. For offenders whose crime was committed on or after October 1, 2011, the intake fee prescribed shall be not less than four hundred dollars or more than six hundred dollars, and shall be assessed for each judgment and sentence imposed by the superior court in which supervision by the department is required.

(3) For offenders whose offense date was before October 1, 2011, the monthly rate shall be converted to a one-time fee. The amount due shall be based upon the most recent monthly fee amount by the months of supervision left to serve, but in no case shall exceed six hundred dollars.

(4) Nothing in chapter 40, Laws of 2011 1st sp. sess. shall affect the amount or dates payments are due for any prior balances owed by an offender for the cost of supervision.

(5) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(6) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(7) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of community custody, the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760. [2011 1st sp.s. c 40 § 10; 2008 c 231

§ 37; 2003 c 379 § 18; 1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2. Formerly RCW 9.94A.270.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.810 Transition and relapse prevention strategies. Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department. [2000 c 28 § 35.]

Additional notes found at www.leg.wa.gov

9.94A.820 Sex offender treatment in the community.

(1) Sex offender examinations and treatment ordered as a special condition of community custody under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home. [2008 c 231 § 38; 2004 c 38 § 10; 2000 c 28 § 36.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2004 c 38: See note following RCW 18.155.075.

Additional notes found at www.leg.wa.gov

SPECIAL ALLEGATIONS

9.94A.825 Deadly weapon special verdict—Definition. In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Black-jack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3. Formerly RCW 9.94A.602, 9.94A.125.]

Additional notes found at www.leg.wa.gov

9.94A.827 Methamphetamine—Manufacturing with child on premises—Special allegation. In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401 relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.605, 9.94A.128.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 134: See note following RCW 69.50.440.

9.94A.829 Special allegation—Offense committed by criminal street gang member or associate—Procedures. In a criminal case in which the defendant has been convicted of unlawful possession of a firearm under RCW 9.41.040, and there has been a special allegation pleaded and proven by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030, the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether

or not the accused was a criminal street gang member or associate during the commission of the crime. [2009 c 28 § 16.]

Effective date—2009 c 28: See note following RCW 2.24.040.

9.94A.831 Special allegation—Assault of law enforcement personnel with a firearm—Procedures. In a criminal case where:

(1) The defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault as provided under RCW 9A.36.031; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant intentionally committed the assault with what appears to be a firearm;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2009 c 141 § 1.]

9.94A.833 Special allegation—Involving minor in felony offense—Procedures. (1) In a prosecution of a criminal street gang-related felony offense, the prosecution may file a special allegation that the felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense, as described under RCW 9.94A.533(10)(a).

(2) The state has the burden of proving a special allegation made under this section beyond a reasonable doubt. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the criminal street gang-related felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense. If no jury is had, the court shall make a finding of fact as to whether the criminal street gang-related felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense. [2008 c 276 § 302.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

9.94A.834 Special allegation—Endangerment by eluding a police vehicle—Procedures. (1) The prosecuting attorney may file a special allegation of endangerment by eluding in every criminal case involving a charge of attempting to elude a police vehicle under RCW 46.61.024, when sufficient admissible evidence exists, to show that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the person committing the crime of attempting to elude a police vehicle.

(2) In a criminal case in which there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime while endangering one or more persons other than the defendant or the pursuing law enforcement officer. The court shall make a finding of fact of whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a

special verdict as to whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered during the commission of the crime. [2008 c 219 § 2.]

Short title—2008 c 219: "This act may be known and cited as the Guillermo "Bobby" Aguilar and Edgar F. Trevino-Mendoza public safety act of 2008." [2008 c 219 § 1.]

9.94A.835 Special allegation—Sexual motivation—Procedures. (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030.

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [2009 c 28 § 15; 2006 c 123 § 2; 1999 c 143 § 11; 1990 c 3 § 601. Formerly RCW 9.94A.127.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Effective date—2006 c 123: See note following RCW 9.94A.533.

Additional notes found at www.leg.wa.gov

9.94A.836 Special allegation—Offense was predatory—Procedures. (1) In a prosecution for rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, the prosecuting attorney shall file a special allegation that the offense was predatory whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the offense was predatory, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the offense was predatory. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the offense was predatory. If no jury is had, the court shall make a finding of fact as to whether the offense was predatory.

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(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful. [2006 c 122 § 1.]

Effective date—2006 c 122 §§ 1-4 and 6: "Sections 1 through 4 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 20, 2006]." [2006 c 122 § 10.]

9.94A.837 Special allegation—Victim was under fifteen years of age—Procedures. (1) In a prosecution for rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was under fifteen years of age at the time of the offense whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the victim was under fifteen years of age at the time of the offense, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was under fifteen years of age at the time of the offense. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was under the age of fifteen at the time of the offense. If no jury is had, the court shall make a finding of fact as to whether the victim was under the age of fifteen at the time of the offense.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful. [2006 c 122 § 2.]

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

9.94A.838 Special allegation—Victim had diminished capacity—Procedures. (1) In a prosecution for rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objec-

tive fact finder that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If no jury is had, the court shall make a finding of fact as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

(4) For purposes of this section, "developmentally disabled," "mentally disordered," and "frail elder or vulnerable adult" have the same meaning as in *RCW 9A.44.010. [2006 c 122 § 3.]

***Reviser's note:** RCW 9A.44.010 was amended by 2007 c 20 § 3, changing the definition of "developmentally disabled" and "mentally disordered" to "person with a developmental disability" and "person with a mental disorder," respectively.

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

9.94A.839 Special allegation—Sexual conduct with victim in return for a fee—Procedures. (1) In a prosecution for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, or an anticipatory offense for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, committed on or after July 22, 2007, the prosecuting attorney may file a special allegation that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the vic-

tim in the sexual conduct in exchange for a fee. If no jury is had, the court shall make a finding of fact as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in exchange for a fee.

(3) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact as defined in chapter 9A.44 RCW. [2007 c 368 § 10.]

SEX OFFENDERS

9.94A.840 Sex offenders—Release from total confinement—Notification of prosecutor. (1)(a) When it appears that a person who has been convicted of a sexually violent offense may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(1), the agency with jurisdiction over the person shall refer the person in writing to the prosecuting attorney of the county where that person was convicted, three months prior to the anticipated release from total confinement.

(b) The agency shall inform the prosecutor of the following:

(i) The person's name, identifying factors, anticipated future residence, and offense history; and

(ii) Documentation of institutional adjustment and any treatment received.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency with jurisdiction, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [1992 c 45 § 1; 1990 c 3 § 122. Formerly RCW 9.94A.151.]

***Reviser's note:** RCW 71.09.020 was amended by 2001 2nd sp.s. c 12 § 102, changing subsection (1) to subsection (12). RCW 71.09.020 was subsequently amended by 2002 c 58 § 2, changing subsection (12) to subsection (16). RCW 71.09.020 was subsequently amended by 2009 c 409 § 1, changing subsection (16) to subsection (18).

Additional notes found at www.leg.wa.gov

9.94A.843 Sex offenders—Release of information—Immunity. The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with RCW 4.24.550. [1990 c 3 § 123. Formerly RCW 9.94A.152.]

Additional notes found at www.leg.wa.gov

9.94A.844 Sex offenders—Discretionary decisions—Immunity. Law enforcement agencies and the department of corrections are immune from civil liability for damages from discretionary decisions made under chapter 436, Laws of 2005 if they make a good faith effort to comply with chapter 436, Laws of 2005. [2005 c 436 § 5.]

Reviser's note: 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

9.94A.8445 Community protection zones—Preemption of local regulations—Retrospective application. (1) Sections 1 through 3 and 5 of chapter 436, Laws of 2005, supersede and preempt all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to residency restrictions for persons convicted of any sex offense at any time.

(2) This section does not apply to rules, regulations, codes, statutes, or ordinances adopted by cities, counties, municipalities, or local agencies prior to March 1, 2006, except as required by an order issued by a court of competent jurisdiction pursuant to litigation regarding the rules, regulations, codes, statutes, or ordinances. [2006 c 131 § 1.]

Contingent expiration date—2006 c 131 § 1: "(1) If the association of Washington cities submits consensus statewide standards to the governor and the legislature on or before December 31, 2007, section 1 of this act expires July 1, 2008, and may only be revived by an affirmative act of the legislature through duly enacted legislation.

(2) If the association of Washington cities does not submit consensus statewide standards to the governor and legislature on or before December 31, 2007, section 1 of this act does not expire." [2006 c 131 § 4.]

Reviser's note: No consensus statewide standards on sex offender residency restrictions were delivered to the governor on or before December 31, 2007.

Residency restrictions on sex offenders—Statewide standards—2006 c 131: "(1) The association of Washington cities, working with the cities and towns of Washington state, shall develop statewide standards for cities and towns to use when determining whether to impose residency restrictions on sex offenders within their jurisdiction.

(2) The association of Washington cities shall work in consultation with a representative from each of the following agencies and organizations:

- (a) The attorney general of Washington;
- (b) The Washington state association of counties;
- (c) The department of corrections;
- (d) The Washington state coalition of sexual assault programs;
- (e) The Washington association of sheriffs and police chiefs; and
- (f) Any other agencies and organizations as deemed appropriate by the association of Washington cities, such as the Washington association of prosecuting attorneys, the juvenile rehabilitation administration of the department of social and health services, the indeterminate sentence review board, the Washington association for the treatment of sexual abusers, and the *department of community, trade, and economic development.

(3) The statewide standards for whether to impose residency restrictions on sex offenders should consider the following elements:

- (a) An identification of areas in which sex offenders should not reside due to concerns regarding public safety and welfare;
- (b) An identification of areas in which sex offenders may reside, taking into consideration factors such as:
 - (i) How many housing units must reasonably be available in order to accommodate registered sex offenders in a city or town;
 - (ii) The average response time of emergency services to the areas;
 - (iii) The proximity of risk potential activities to the areas; and
 - (iv) The proximity of medical care, mental health care providers, and sex offender treatment providers to the areas;
- (c) A prohibition against completely precluding sex offender residences within a city or town, implicating a sex offender's right to travel, or enacting a criminal regulatory measure;
- (d) Appropriate civil remedies for violations of a local ordinance; and
- (e) Unique local conditions that should be given due deference, such as proximity to state facilities that house or treat sex offenders.

(4) The association of Washington cities, on behalf of the cities and towns in Washington, shall present consensus statewide standards, along with any consensus recommendations and proposed legislation, to the governor and the legislature no later than December 31, 2007. The standards and any recommendations or proposed legislation must reflect a consensus among the association of Washington cities and the entities in subsection (2)(a) through (e) of this section. These entities must participate in good

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faith in activities carried out under this section with a goal of achieving consensus standards." [2006 c 131 § 3.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

9.94A.846 Sex offenders—Release of information. In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to RCW 4.24.550, release information concerning convicted sex offenders confined to the department of corrections. [1990 c 3 § 124. Formerly RCW 9.94A.153.]

Additional notes found at www.leg.wa.gov

SENTENCING GUIDELINES COMMISSION

9.94A.860 Sentencing guidelines commission—Membership—Appointments—Terms of office—Expenses and compensation. (1) The sentencing guidelines commission is hereby created, located within the office of financial management. Except as provided in RCW 9.94A.875, the commission shall serve to advise the governor and the legislature as necessary on issues relating to adult and juvenile sentencing. The commission may meet, as necessary, to accomplish these purposes within funds appropriated.

(2) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, or his or her designee, subject to confirmation by the senate.

(3) The voting membership consists of the following:

- (a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;
- (b) The director of financial management or designee, as an ex officio member;
- (c) The chair of the indeterminate sentence review board, as an ex officio member;
- (d) The head of the state agency, or the agency head's designee, having responsibility for juvenile corrections programs, as an ex officio member;
- (e) Two prosecuting attorneys;
- (f) Two attorneys with particular expertise in defense work;
- (g) Four persons who are superior court judges;
- (h) One person who is the chief law enforcement officer of a county or city;
 - (i) Four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;
 - (j) One person who is an elected official of a county government, other than a prosecuting attorney or sheriff;
 - (k) One person who is an elected official of a city government;
 - (l) One person who is an administrator of juvenile court services.

In making the appointments, the governor shall endeavor to assure that the commission membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system. In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting

attorney members, of the Washington state bar association in respect to the defense attorney members, of the association of superior court judges in respect to the members who are judges, of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer, of the Washington state association of counties in respect to the member who is a county official, of the association of Washington cities in respect to the member who is a city official, of the office of crime victims advocacy and other organizations of crime victims in respect to the member who is a victim of crime or a crime victims' advocate, and of the Washington association of juvenile court administrators in respect to the member who is an administrator of juvenile court services.

(4)(a) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed.

(b) The governor shall stagger the terms of the members appointed under subsection (3)(j), (k), and (l) of this section by appointing one of them for a term of one year, one for a term of two years, and one for a term of three years.

(5) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(6) The members of the commission may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members may be reimbursed by their respective houses as provided under RCW 44.04.120. Except for the reimbursement of travel expenses, members shall not be compensated. [2011 1st sp.s. c 40 § 36; 2001 2nd sp.s. c 12 § 311; 1996 c 232 § 3; 1993 c 11 § 1; 1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6. Formerly RCW 9.94A.060.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

9.94A.865 Standard sentence ranges—Revisions or modifications—Submission to legislature. Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years. [1986 c 257 § 19; 1981 c 137 § 7. Formerly RCW 9.94A.070.]

Additional notes found at www.leg.wa.gov

9.94A.8673 Sex offender policy board—Membership—Expenses and compensation. (1) Within funds appropriated for this purpose, the sentencing guidelines commission shall establish and maintain a sex offender policy board.

(2)(a) The board shall serve to advise the governor and the legislature as necessary on issues relating to sex offender management.

(b) At such times as the governor or a legislative committee of jurisdiction may request, the sex offender policy board may be convened to:

(i) Undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy; and

(ii) Conduct case reviews of sex offense incidents to understand performance of Washington's sex offender prevention and response systems.

(3) The sex offender policy board shall consist of thirteen voting members. Unless the member is specifically named in this section, the following organizations shall designate a person to sit on the board. The voting membership shall consist of the following:

(a) A representative of the Washington association of sheriffs and police chiefs;

(b) A representative of the Washington association of prosecuting attorneys;

(c) A representative of the Washington association of criminal defense lawyers;

(d) The chair of the indeterminate sentence review board or his or her designee;

(e) A representative of the Washington association for the treatment of sex abusers;

(f) The secretary of the department of corrections or his or her designee;

(g) A representative of the Washington state superior court judges' association;

(h) The assistant secretary of the juvenile rehabilitation administration or his or her designee;

(i) The office of crime victims advocacy in the department of commerce;

(j) A representative of the Washington state association of counties;

(k) A representative of the association of Washington cities;

(l) A representative of the Washington association of sexual assault programs; and

(m) The director of the special commitment center or his or her designee.

(4) The board shall choose its chair by majority vote from among its voting membership. The chair's term shall be two years.

(5) As appropriate, the board shall consult with the criminal justice division in the attorney general's office and the Washington institute for public policy.

(6) Members of the board shall receive no compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 40 § 37; 2008 c 249 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Captions not law—2008 c 249: "Captions used in this act are not any part of the law." [2008 c 249 § 12.]

CLEMENCY, INMATE POPULATION

9.94A.870 Emergency due to inmate population exceeding correctional facility capacity. If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maxi-

imum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1999 c 143 § 13; 1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16. Formerly RCW 9.94A.160.]

Additional notes found at www.leg.wa.gov

9.94A.875 Emergency in county jails population exceeding capacity. If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 209 § 9. Formerly RCW 9.94A.165.]

Additional notes found at www.leg.wa.gov

9.94A.880 Clemency and pardons board—Membership—Terms—Chair—Bylaws—Travel expenses—Staff. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing

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one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board. [2011 c 336 § 335; 1981 c 137 § 25. Formerly RCW 9.94A.250.]

Additional notes found at www.leg.wa.gov

9.94A.885 Clemency and pardons board—Petitions for review—Hearing. (1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to engaging in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider statements presented as set forth in RCW 7.69.032. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [2009 c 325 § 6; 2009 c 138 § 4; 1999 c 323 § 3; 1989 c 214 § 2; 1981 c 137 § 26. Formerly RCW 9.94A.260.]

Reviser's note: This section was amended by 2009 c 138 § 4 and by 2009 c 325 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1999 c 323: "The pardoning power is vested in the governor under such regulations and restrictions as may be prescribed by law. To assist the governor in gathering the facts necessary to the wise exercise of this power, the legislature created the clemency and pardons board.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, an intelligent recommen-

dation on an application for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the legislature to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

The impact of the crime on the community must also be assessed when passing upon an application for clemency. The prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are uniquely situated to provide an accurate account of the offense and the impact felt by the community as a result of the offense. It is the intent of the legislature to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process." [1999 c 323 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.890 Abused victim—Resentencing for murder of abuser. (1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing offenders convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The offender was convicted for a murder committed prior to July 23, 1989;

(b) RCW 9.94A.535(1)(h), if effective when the offender committed the crime, would have provided a basis for the offender to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the offender for the murder, did not consider evidence that the victim subjected the offender or the offender's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the offender in light of RCW 9.94A.535(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the offender committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed. [2000 c 28 § 42; 1993 c 144 § 5. Formerly RCW 9.94A.395.]

Additional notes found at www.leg.wa.gov

MISCELLANEOUS

9.94A.905 Effective date of *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250, 9.94A.260—Sentences apply to felonies committed after June 30, 1984. *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984. [1981 c 137 § 28.]

***Reviser's note:** The majority of chapter 9.94A RCW was recodified by 2001 c 10 § 6. See Comparative Table for chapter 9.94A RCW in the Table of Disposition of Former RCW Sections.

9.94A.910 Severability—1981 c 137. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1981 c 137 § 41.]

9.94A.920 Headings and captions not law—2000 c 28. Part headings and section captions used in this act do not constitute any part of the law. [2000 c 28 § 43.]

9.94A.921 Effective date—2000 c 28. Sections 1 through 42 of this act take effect July 1, 2001. [2000 c 28 § 46.]

9.94A.922 Severability—2000 c 28. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2000 c 28 § 47.]

9.94A.923 Nonentitlement. Nothing in chapter 290, Laws of 2002 creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment. [2002 c 290 § 26.]

Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: See note following RCW 70.96A.350.

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

9.94A.924 Severability—2002 c 290. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 290 § 28.]

9.94A.925 Application—2003 c 379 §§ 13-27. The provisions of sections 13 through 27, chapter 379, Laws of 2003 apply to all offenders currently, or in the future, subject to sentences with unsatisfied legal financial obligations. The provisions of sections 13 through 27, chapter 379, Laws of 2003 do not change the amount of any legal financial obligation or the maximum term for which any offender is, or may be, under the jurisdiction of the court for collection of legal financial obligations. [2003 c 379 § 24.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

9.94A.926 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender

neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 21.]

9.94A.930 Recodification. The code reviser shall recodify sections within chapter 9.94A RCW, and correct any cross-references to any such recodified sections, as necessary to simplify the organization of chapter 9.94A RCW. [2001 c 10 § 6.]

Chapter 9.94B RCW
SENTENCING—CRIMES COMMITTED
PRIOR TO JULY 1, 2000

Sections

9.94B.010	Application of chapter.
9.94B.020	Definitions.
9.94B.030	Postrelease supervision—Violations—Expenses.
9.94B.040	Noncompliance with condition or requirement of sentence—Procedure—Penalty.
9.94B.050	Community placement.
9.94B.060	Community placement for specified offenders.
9.94B.070	Community custody for sex offenders.
9.94B.080	Mental status evaluations.
9.94B.090	Transfer to community custody status in lieu of earned release.
9.94B.100	Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989.

9.94B.010 Application of chapter. (1) This chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.

(2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter. [2008 c 231 § 51.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94B.020 Definitions. In addition to the definitions set out in RCW 9.94A.030, the following definitions apply for purposes of this chapter:

(1) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW *16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(3) "Postrelease supervision" is that portion of an offender's community placement that is not community custody. [2008 c 231 § 52.]

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***Reviser's note:** RCW 16.52.200 was amended by 2009 c 287 § 3, changing subsection (6) to subsection (7). RCW 16.52.200 was subsequently amended by 2011 c 172 § 4, changing subsection (7) to subsection (9).

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94B.030 Postrelease supervision—Violations—Expenses. If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94B.040. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction. [2009 c 28 § 18; 1988 c 153 § 8. Formerly RCW 9.94A.628, 9.94A.175.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94B.040 Noncompliance with condition or requirement of sentence—Procedure—Penalty. (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the depart-

ment's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other

about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate. [2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.634, 9.94A.200.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—1998 c 260: See note following RCW 9.94A.500.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94B.050 Community placement. When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with *RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive. [2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22. Formerly RCW 9.94A.700.]

***Reviser's note:** RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

9.94B.060 Community placement for specified offenders. Except for persons sentenced under RCW 9.94B.050(2) or 9.94B.070, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with *RCW 9.94A.728 (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to

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which the offender may become eligible, in accordance with *RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section. [2009 c 28 § 19; 2003 c 379 § 5; 2000 c 28 § 23. Formerly RCW 9.94A.705.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsections (1) and (2).

Effective date—2009 c 28: See note following RCW 2.24.040.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Additional notes found at www.leg.wa.gov

9.94B.070 Community custody for sex offenders. (1)

When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94B.050(4) and may include those provided for in RCW 9.94B.050(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.704.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. [2009 c 28 § 20; 2000 c 28 § 24. Formerly RCW 9.94A.710.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94B.080 Mental status evaluations. The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report

and, if applicable, mental status evaluations that have been filed with the court to determine the offender’s competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate. [2008 c 231 § 53.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94B.090 Transfer to community custody status in lieu of earned release. A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with *RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to **RCW 9.94A.728(1). [2008 c 231 § 54.]

Reviser’s note: *(1) RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

** (2) RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsection (1).

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94B.100 Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989. For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94B.040. [2009 c 28 § 14; 1989 c 252 § 18. Formerly RCW 9.94A.771, 9.94A.201.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 9.95 RCW

INDETERMINATE SENTENCES

(Formerly: Prison terms, paroles, and probation)

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Commitments: Chapter 10.70 RCW.

Counties may provide probation and parole services: RCW 36.01.070.

Final discharge: RCW 9.96.050.

Form of sentence to penitentiary: RCW 10.64.060.

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

Probation and parole, transfer of certain powers, duties to department of corrections: Chapter 72.04A RCW.

Restoration of civil rights: Chapter 9.96 RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

Western interstate corrections compact, board members may hold hearings: RCW 72.70.040.

9.95.0001 Definitions. (1) "Board" means the indeterminate sentence review board.

(2) "Community custody" means that portion of an offender's sentence subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to community safety, that is served under supervision in the community, and which may be modified or revoked for violations of release conditions.

(3) "Crime-related prohibition" has the meaning defined in RCW 9.94A.030.

(4) "Department" means the department of corrections.

(5) "Parole" means that portion of a person's sentence for a crime committed before July 1, 1984, served on conditional release in the community subject to board controls and revocation and under supervision of the department.

(6) "Secretary" means the secretary of the department of corrections or his or her designee. [2001 2nd sp.s. c 12 § 317.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.0002 Transfer of board to department of corrections—Members of board shall exercise independent judgment. (1) The indeterminate sentence review board is transferred to the department of corrections.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written materials in the possession of the indeterminate sentence review board shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the indeterminate sentence review

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board shall be made available to the department of corrections. All funds, credits, or other assets held by the indeterminate sentence review board shall be assigned to the department of corrections.

(b) Any appropriations made to the indeterminate sentence review board shall, on August 24, 2011, be transferred and credited to the department of corrections.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the indeterminate sentence review board are transferred to the jurisdiction of the department of corrections. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of corrections to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the indeterminate sentence review board shall be continued and acted upon by the department of corrections. All existing contracts and obligations shall remain in full force and shall be performed by the department of corrections.

(5) The transfer of the powers, duties, functions, and personnel of the indeterminate sentence review board shall not affect the validity of any act performed before August 24, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the indeterminate sentence review board assigned to the department of corrections under chapter 40, Laws of 2011 1st sp. sess. whose positions are within an existing bargaining unit description at the department of corrections shall become a part of the existing bargaining unit at the department of corrections and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

(8) Notwithstanding any provision of chapter 40, Laws of 2011 1st sp. sess. and despite the transfer of the indeterminate sentence review board to the department of corrections, the members of the indeterminate sentence review board will possess and shall exercise independent judgment when making any decisions concerning offenders. These decisions include, but are not limited to, decisions concerning offenders' release, revocation, reinstatement, or the imposition of conditions of supervision. [2011 1st sp.s. c 40 § 16.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.95.001 Board of prison terms and paroles redesignated as indeterminate sentence review board. On July 1,

1986, the board of prison terms and paroles shall be redesignated the indeterminate sentence review board. The newly designated board shall retain the same membership and staff as the previously designated board of prison terms and paroles. References to "the board" or "board of prison terms and paroles" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the indeterminate sentence review board. [1986 c 224 § 2; (i) 1935 c 114 § 1; RRS § 10249-1. (ii) 1947 c 47 § 1; Rem. Supp. 1947 § 10249-1a. Formerly RCW 43.67.010.]

Additional notes found at www.leg.wa.gov

9.95.002 Board considered parole board. The indeterminate sentence review board, in fulfilling its duties under the provisions of chapter 12, Laws of 2001 2nd sp. sess., shall be considered a parole board as that concept was treated in law under the state's indeterminate sentencing statutes. [2001 2nd sp.s. c 12 § 363.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.003 Appointment of board members—Qualifications—Duties of chair—Salaries and travel expenses—Staffing. (1) The board is created within the department. The board shall consist of a chair and four other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his or her stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chair at the governor's pleasure. The appointed chair shall serve as a fully participating board member.

(2) The department shall provide administrative and staff support for the board. The secretary may employ a senior administrative officer and such other personnel as may be necessary to assist the board in carrying out its duties.

(3) The members of the board and staff assigned to the board shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 40 § 15; 2011 c

336 § 336; 2007 c 362 § 1; 1997 c 350 § 2; 1986 c 224 § 3; 1975-'76 2nd ex.s. c 34 § 8; 1969 c 98 § 9; 1959 c 32 § 1; 1955 c 340 § 9. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.020.]

Reviser's note: This section was amended by 2011 c 336 § 336 and by 2011 1st sp.s. c 40 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.005 Board meetings—Quarters at institutions. The board shall meet at major state correctional institutions at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it; whose community custody supervision is under the board's authority; or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board while in the discharge of their duties. [2011 1st sp.s. c 40 § 17; 2001 2nd sp.s. c 12 § 318; 1986 c 224 § 4; 1959 c 32 § 2; 1955 c 340 § 10. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.030.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.007 Transaction of board's business in panels—Action by full board. The board may meet and transact business in panels. Each board panel shall consist of at least two members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in such matters. The chair of the board with the consent of a majority of the board may designate any two members to exercise all the powers and duties of the board in connection with any hearing before the board. If the two members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, such hearing shall be reheard by the full board. All actions of the full board shall be by concurrence of a majority of the sitting board members. [2011 1st sp.s. c 40 § 18; 2011 c 336 § 337; 1986 c 224 § 5; 1975-'76 2nd ex.s. c 63 § 1; 1959 c 32 § 3. Formerly RCW 43.67.035.]

Reviser's note: This section was amended by 2011 c 336 § 337 and by 2011 1st sp.s. c 40 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.009 Board of prison terms and paroles redesignated indeterminate sentence review board—Continuation of functions. (1) On July 1, 1986, the board of prison terms and paroles shall be redesignated as the indeterminate sentence review board. The board's membership shall be

reduced as follows: On July 1, 1986, and on July 1st of each year until 1998, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration, on that date, of the term or terms having the least time left to serve.

(2) After July 1, 1984, the board shall continue its functions with respect to persons convicted of crimes committed prior to July 1, 1984, and committed to the department of corrections. When making decisions on duration of confinement, including those relating to persons committed under a mandatory life sentence, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations: PROVIDED, That the board and its successors shall give adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges under chapter 9.94A RCW of the sentencing reform act. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system.

(3) Notwithstanding the provisions of subsection (2) of this section, the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. [2011 1st sp.s. c 40 § 41; 1990 c 3 § 707; 1989 c 259 § 1; 1986 c 224 § 6; 1985 c 279 § 1; 1982 c 192 § 8; 1981 c 137 § 24.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.010 Court to fix maximum sentence. When a person, whose crime was committed before July 1, 1984, is convicted of any felony, except treason, murder in the first degree, or carnal knowledge of a child under ten years, and a new trial is not granted, the court shall sentence such person to the penitentiary, or, if the law allows and the court sees fit to exercise such discretion, to the reformatory, and shall fix the maximum term of such person's sentence only.

The maximum term to be fixed by the court shall be the maximum provided by law for the crime of which such person was convicted, if the law provides for a maximum term. If the law does not provide a maximum term for the crime of which such person was convicted the court shall fix such maximum term, which may be for any number of years up to and including life imprisonment but in any case where the maximum term is fixed by the court it shall be fixed at not

less than twenty years. [2001 2nd sp.s. c 12 § 319; 1955 c 133 § 2. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Punishment: Chapter 9.92 RCW.

Additional notes found at www.leg.wa.gov

9.95.011 Minimum terms. (1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW 9.94A.507, for a sex offense committed on or after September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW 9.94A.507 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(c) In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under RCW 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review. [2011 1st sp.s. c 40 § 40; 2009 c 28 § 21; 2007 c 363 § 1; 2002 c 174 § 2; 2001 2nd sp.s. c 12 § 320; 1993 c 144 § 3; 1986 c 224 § 7.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Effective date—2002 c 174: See note following RCW 9.95.420.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.013 Application of sentencing reform act to board decision. The board shall apply all of the statutory requirements of RCW 9.95.009(2), requiring decisions of the board to be reasonably consistent with the ranges, standards, and purposes of the sentencing reform act, chapter 9.94A RCW, and the minimum term recommendations of the sentencing judge and the prosecuting attorney, to every person who, on July 23, 1989, is incarcerated and has been adjudged under the provisions of RCW 9.92.090. [1989 c 259 § 5.]

9.95.015 Finding of fact or special verdict establishing defendant armed with deadly weapon. In every criminal case wherein conviction would require the board to determine the duration of confinement, or the court to make such determination for persons committed after July 1, 1986, for crimes committed before July 1, 1984, and wherein there has been an allegation and evidence establishing that the accused was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused was armed with a deadly weapon, as defined by RCW 9.95.040, at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant was armed with a deadly weapon, as defined in RCW 9.95.040, at the time of the commission of the crime. [1986 c 224 § 8; 1961 c 138 § 1.]

Additional notes found at www.leg.wa.gov

9.95.017 Criteria for confinement and parole. (1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420

through 9.95.440. [2009 c 28 § 22; 2008 c 231 § 40; 2003 c 218 § 2; 2001 2nd sp.s. c 12 § 321; 1986 c 224 § 11.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.020 Duties of superintendent of correctional institution. If the sentence of a person so convicted is not suspended by the court, the superintendent of a major state correctional institution shall receive such person, if committed to his or her institution, and imprison the person until released under the provisions of this chapter, under RCW 9.95.420, upon the completion of the statutory maximum sentence, or through the action of the governor. [2001 2nd sp.s. c 12 § 322; 1955 c 133 § 3. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.028 Statement of prosecuting attorney provided to department, when. It is the intent of the legislature to expedite the inmate classification process of the department of corrections. The statement of the prosecuting attorney regarding a convicted criminal defendant should be prepared and made available to the department at the time the convicted person is placed in the custody of the department. [1984 c 114 § 1.]

9.95.030 Statement to indeterminate sentence review board. At the time the convicted person is transported to the custody of the department of corrections, the indeterminate sentence review board shall obtain from the sentencing judge and the prosecuting attorney, a statement of all the facts concerning the convicted person's crime and any other information of which they may be possessed relative to him or her, and the sentencing judge and the prosecuting attorney shall furnish the board with such information. The sentencing judge and prosecuting attorney shall indicate to the board, for its guidance, what, in their judgment, should be the duration of the convicted person's imprisonment. [2011 c 336 § 338; 1999 c 143 § 17; 1984 c 114 § 2; 1955 c 133 § 4. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.031 Statement of prosecuting attorney. Whenever any person shall be convicted of a crime and who shall be sentenced to imprisonment or confinement in a state correctional facility, it shall be the duty of the prosecuting attorney who prosecuted such convicted person to make a statement of the facts respecting the crime for which the prisoner was tried and convicted, and include in such statement all information that the prosecuting attorney can give in regard to the career of the prisoner before the commission of the crime for which the prisoner was convicted and sentenced, stating to the best of the prosecuting attorney's knowledge whether the prisoner was industrious and of good character,

and all other facts and circumstances that may tend to throw any light upon the question as to whether such prisoner is capable of again becoming a good citizen. [1992 c 7 § 23; 1929 c 158 § 1; RRS § 10254.]

Reviser's note: This section and RCW 9.95.032 antedate the 1935 act (1935 c 114) that created the board of prison terms and paroles. They were not expressly repealed thereby, although part of section 2 of the 1935 act (RCW 9.95.030) contains similar provisions. The effect of 1935 c 114 (as amended) upon other unrepealed prior laws is discussed in *Lindsey v. Superior Court*, 33 Wn. (2d) 94 at pp 99-100.

9.95.032 Statement of prosecuting attorney—Delivery of statement. Such statement shall be signed by the prosecuting attorney and approved by the judge by whom the judgment was rendered and shall be delivered to the sheriff, traveling guard, department of corrections personnel, or other officer executing the sentence, and a copy of such statement shall be furnished to the defendant or his or her attorney. Such officer shall deliver the statement, at the time of the prisoner's commitment, to the superintendent of the institution to which such prisoner has been committed. The superintendent shall make such statement available for use by the board. [2001 2nd sp.s. c 12 § 323; 1984 c 114 § 3; 1929 c 158 § 2; RRS § 10255.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.040 Terms fixed by board—Minimums for certain cases. The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of the convicted person to a state correctional facility, the board shall fix the duration of confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which the person was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

Subject to RCW 9.95.047, the following limitations are placed on the board or the court for persons committed to a state correctional facility on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

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(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years.

(4) Any person convicted of embezzling funds from any institution of public deposit of which the person was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of a state correctional facility has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: PROVIDED, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired.

An inmate serving a sentence fixed under this chapter, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the secretary of corrections when authorized under *RCW 9.94A.728(4). [1999 c 324 § 4. Prior: 1993 c 144 § 4; 1993 c 140 § 1; 1992 c 7 § 24; 1986 c 224 § 9; 1975-'76 2nd ex.s. c 63 § 2; 1961 c 138 § 2; 1955 c 133 § 5; prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, changing subsection (4) to subsection (3).

Additional notes found at www.leg.wa.gov

9.95.045 Abused victim—Reduction in sentence for murder of abuser—Petition for review. (1) An inmate convicted of murder may petition the indeterminate sentence review board to review the inmate's sentence if the petition alleges the following:

(a) The inmate was sentenced for a murder committed prior to July 23, 1989, which was the effective date of section 1, chapter 408, Laws of 1989, as codified in RCW 9.94A.535(1)(h). RCW 9.94A.535(1)(h) provides that the sentencing court may consider as a mitigating factor evidence that the defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense was a response to that abuse;

(b) RCW 9.94A.535(1)(h), if effective when the defendant committed the crime, would have provided a basis for the defendant to seek a mitigated sentence; and

(c) The sentencing court when determining what sentence to impose, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) An inmate who seeks to have his or her sentence reviewed under this section must petition the board for review no later than October 1, 1993. The petition may be by letter requesting review.

(3)(a) If the inmate was convicted of a murder committed prior to July 1, 1984, and the inmate is under the jurisdiction of the indeterminate sentence review board, the board

shall conduct the review as provided in RCW 9.95.047. If the inmate was sentenced pursuant to chapter 9.94A RCW for a murder committed after June 30, 1984, but before July 23, 1989, the board shall conduct the review and may make appropriate recommendations to the sentencing court as provided in RCW 9.94A.890. The board shall complete its review of the petitions and submit recommendations to the sentencing courts or their successors by October 1, 1994.

(b) When reviewing petitions, the board shall solicit recommendations from the prosecuting attorneys of the counties where the petitioners were convicted, and shall accept input from other interested parties. [1993 c 144 § 1.]

Additional notes found at www.leg.wa.gov

9.95.047 Abused victim—Considerations of board in reviewing petition. (1) If an inmate under the board's jurisdiction files a petition for review under RCW 9.95.045, the board shall review the duration of the inmate's confinement, including review of the minimum term and parole eligibility review dates. The board shall consider whether:

(a) The petitioner was convicted for a murder committed prior to the effective date of RCW 9.94A.535(1)(h);

(b) RCW 9.94A.535(1)(h), if effective when the petitioner committed the crime, would have provided a basis for the petitioner to seek a mitigated sentence; and

(c) The sentencing court and prosecuting attorney, when making their minimum term recommendations, considered evidence that the victim subjected the petitioner or the petitioner's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The board may reset the minimum term and parole eligibility review date of a petitioner convicted of murder if the board finds that had RCW 9.94A.535(1)(h) been effective when the petitioner committed the crime, the petitioner may have received an exceptional mitigating sentence. [1993 c 144 § 2.]

Additional notes found at www.leg.wa.gov

9.95.052 Redetermination and refixing of minimum term of confinement. At any time after the board (or the court after July 1, 1986) has determined the minimum term of confinement of any person subject to confinement in a state correctional institution for a crime committed before July 1, 1984, the board may request the superintendent of such correctional institution to conduct a full review of such person's prospects for rehabilitation and report to the board the facts of such review and the resulting findings. Upon the basis of such report and such other information and investigation that the board deems appropriate, the board may redetermine and refix such convicted person's minimum term of confinement whether the term was set by the board or the court.

The board shall not reduce a person's minimum term of confinement unless the board has received from the department of corrections all institutional conduct reports relating to the person. [2001 2nd sp.s. c 12 § 324; 1986 c 224 § 10; 1983 c 196 § 1; 1972 ex.s. c 67 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.055 Reduction of sentences during war emergency. The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not be made under this section for those inmates who: (1) Are confined for (a) treason; (b) murder in the first degree; or (c) rape of a child in the first degree where the victim is under ten years of age or an equivalent offense under prior law; (2) are being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW; or (3) were sentenced under RCW 9.94A.507 for a crime committed on or after September 1, 2001. [2009 c 28 § 23; 2003 c 218 § 3; 2001 2nd sp.s. c 12 § 325; 1992 c 7 § 25; 1951 c 239 § 1.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.060 When sentence begins to run. When a convicted person seeks appellate review of his or her conviction and is at liberty on bond pending the determination of the proceeding by the supreme court or the court of appeals, credit on his or her sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified to the department of corrections, the indeterminate sentence review board, and the prosecuting attorney of the county in which such convicted person was convicted and sentenced, by the sheriff of such county. If such convicted person does not seek review of the conviction, but is at liberty for a period of time subsequent to the signing of the judgment and sentence, or becomes a fugitive, credit on his sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified as provided in this section. In all other cases, credit on a sentence will begin from the date the judgment and sentence is signed by the court. [1999 c 143 § 18; 1988 c 202 § 15; 1981 c 136 § 36; 1979 c 141 § 1; 1971 c 81 § 46; 1967 c 200 § 10; 1955 c 133 § 7. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. §10249-2, part.]

Additional notes found at www.leg.wa.gov

9.95.062 Stay of judgment—When prohibited—Credit for jail time pending appeal. (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations

under the judgment or has not posted an adequate performance bond to assure payment.

(2) An appeal by a defendant convicted of one of the following offenses shall not stay execution of the judgment of conviction: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

(3) In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed. [2011 c 111 § 3; 1996 c 275 § 9; 1989 c 276 § 1; 1969 ex.s. c 4 § 1; 1969 c 103 § 1; 1955 c 42 § 2. Prior: 1893 c 61 § 30; RRS § 1745. Formerly RCW 10.73.030, part.]

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.95.063 Conviction upon new trial—Former imprisonment deductible. If a defendant who has been imprisoned during the pendency of any posttrial proceeding in any state or federal court shall be again convicted upon a new trial resulting from any such proceeding, the period of his or her former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction. [2011 c 336 § 339; 1971 ex.s. c 86 § 1; 1971 c 81 § 47; 1955 c 42 § 4. Prior: 1893 c 61 § 34; RRS § 1750. Formerly RCW 10.73.070, part.]

9.95.064 Conditions of release. (1) In order to minimize the trauma to the victim, the court may attach conditions on release of an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW *9.94A.712, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. [2008 c 231 § 41; 2001 2nd sp.s. c 12 § 326; 1989 c 276 § 4.]

***Reviser's note:** RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

(2012 Ed.)

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.070 Reductions for good behavior. (1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at a state correctional institution, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the institution, and in whose behalf the superintendent of the institution files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under RCW 9.94A.507 for a crime committed on or after September 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.728. [2009 c 28 § 24; 2003 c 218 § 4; 2001 2nd sp.s. c 12 § 327; 1999 c 143 § 19; 1955 c 133 § 8. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.080 Revocation and redetermination of minimum for infractions. In case any person convicted of a crime committed before July 1, 1984, and under the jurisdiction of the indeterminate sentence review board undergoing sentence in a state correctional institution commits any infractions of the rules and regulations of the institution, the board may revoke any order theretofore made determining the length of time such convicted person shall be imprisoned, including the forfeiture of all or a portion of credits earned or to be earned, pursuant to the provisions of RCW 9.95.110, and make a new order determining the length of time the person shall serve, not exceeding the maximum penalty provided by law for the crime for which the person was convicted, or the maximum fixed by the court. Such revocation and redetermination shall not be had except upon a hearing before the indeterminate sentence review board. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his or her behalf. [2001 2nd sp.s. c 12 § 328; 1992 c 7 § 26; 1972 ex.s. c 68 § 1; 1961 c 106 § 1; 1955 c 133 § 9. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.090 Labor required. (1) The board shall require of every able bodied offender confined in a state correctional institution for a crime committed before July 1, 1984, as many hours of faithful labor in each and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he or she is confined.

(2) Offenders sentenced under RCW 9.94A.507 for crimes committed on or after July 1, 2001, shall perform work or other programming as required by the department of corrections during their term of confinement. [2009 c 28 § 25; 2001 2nd sp.s. c 12 § 329; 1999 c 143 § 20; 1955 c 133 § 10. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Labor by prisoners: Chapter 72.64 RCW.

Additional notes found at www.leg.wa.gov

9.95.100 Prisoner released on serving maximum term. Any person convicted of a felony committed before July 1, 1984, and undergoing sentence in a state correctional institution, not sooner released under the provisions of this chapter, shall, in accordance with the provisions of law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was convicted, or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until his or her maximum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release. [2001 2nd sp.s. c 12 § 330; 1955 c 133 § 11. Prior: (i) 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part. (ii) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.110 Parole. (1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW 9.94A.507, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435. [2009 c 28 § 26; 2008 c 231 § 42; 2003 c 218 § 7; 2001 2nd sp.s. c 12 § 331; 1999 c 143 § 21; 1955 c 133 § 12. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.115 Parole of life term prisoners—Crimes committed before July 1, 1984. The indeterminate sentence review board is hereby granted authority to parole any person sentenced to the custody of the department of corrections, under a mandatory life sentence for a crime committed before July 1, 1984, except those persons sentenced to life without the possibility of parole. No such person shall be granted parole unless the person has been continuously confined therein for a period of twenty consecutive years less earned good time: PROVIDED, That no such person shall be released under parole who is subject to civil commitment as a sexually violent predator under chapter 71.09 RCW. [2001 2nd sp.s. c 12 § 332; 1989 c 259 § 3; 1951 c 238 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.116 Duration of confinement—Mandatory life sentences—Crimes committed before July 1, 1984. (1) The board shall fix the duration of confinement for persons committed to the custody of the department of corrections under a mandatory life sentence for a crime or crimes committed before July 1, 1984. However, no duration of confinement shall be fixed for those persons committed under a life sentence without the possibility of parole.

The duration of confinement for persons covered by this section shall be fixed no later than July 1, 1992, or within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later.

(2) Prior to fixing a duration of confinement under this section, the board shall request from the sentencing judge and the prosecuting attorney an updated statement in accordance with RCW 9.95.030. In addition to the report and recommendations of the prosecuting attorney and sentencing judge, the board shall also consider any victim impact statement submitted by a victim, survivor, or a representative, and any statement submitted by an investigative law enforcement officer. The board shall provide the convicted person with copies of any new statement and an opportunity to comment thereon prior to fixing the duration of confinement. [1989 c 259 § 2.]

9.95.120 Suspension, revision of parole—Community corrections officers—Hearing—Retaking violators—Reinstatement. Whenever the board or a community corrections officer of this state has reason to believe a person convicted of a crime committed before July 1, 1984, has breached a condition of his or her parole or violated the law of any state where he or she may then be or the rules and regulations of the board, any community corrections officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted

person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board by the community corrections officer, with recommendations. The board, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state community corrections officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the community corrections officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board for his or her return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his or her parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he or she may then be, he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violation of conditions of parole after his or her arrest and detention. The hearing shall be held before one or more members of the board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board may determine advisable. Before the board shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a correctional institution. [2003 c 218 § 5; 2001 2nd sp.s. c 12 § 333; 1999 c 143 § 22; 1981 c 136 § 37; 1979 c 141 § 2; 1969 c 98 § 2; 1961 c 106 § 2; 1955 c 133 § 13. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

(2012 Ed.)

Violations of parole or probation—Revision of parole conditions—Rearrest—Detention: RCW 72.04A.090.

Additional notes found at www.leg.wa.gov

9.95.121 On-site revocation hearing—Procedure when waived. (1) For offenders convicted of crimes committed before July 1, 1984, within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he or she shall be personally served by a state community corrections officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his or her right to an on-site parole revocation hearing and of his or her rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (a) reinstate the parolee on parole under the same or modified conditions, or (b) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126.

(2) Offenders sentenced under RCW 9.94A.507 are subject to the violation hearing process established in RCW 9.95.435. [2009 c 28 § 27; 2001 2nd sp.s. c 12 § 334; 1981 c 136 § 38; 1979 c 141 § 3; 1969 c 98 § 3.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.122 On-site revocation hearing—Representation for alleged violators—Compensation. (1) At any on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, the alleged parole violator shall be entitled to be represented by an attorney of his or her own choosing and at his or her own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board.

(2) The rights of offenders sentenced under RCW 9.94A.507 are defined in RCW 9.95.435. [2009 c 28 § 28; 2001 2nd sp.s. c 12 § 335; 1999 c 143 § 23; 1969 c 98 § 4.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.123 On-site parole or community custody revocation or violations hearings—Conduct—Witnesses—Subpoenas, enforcement. In conducting on-site parole hearings or community custody revocation or violations hearings, the board shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole or community custody revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order, the witness shall be dealt with as for contempt of court. [2008 c 231 § 43; 2001 2nd sp.s. c 12 § 336; 1999 c 143 § 24; 1969 c 98 § 5.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.124 On-site revocation hearing—Attorney general's recommendations—Procedural rules. At all on-site parole revocation hearings for offenders convicted of crimes committed before July 1, 1984, the community corrections officers of the department of corrections, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general

may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him or her in any criminal prosecution. The board shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation hearings, together with forms and instructions. [2001 2nd sp.s. c 12 § 337; 1999 c 143 § 25; 1983 c 196 § 2; 1981 c 136 § 39; 1979 c 141 § 4; 1969 c 98 § 6.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.125 On-site parole revocation hearing—Board's decision—Reinstatement or revocation of parole. After the on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, has been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. For parole violations not resulting in new convictions, modified conditions of parole may include sanctions according to an administrative sanction grid. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution the board shall enter an order determining a new minimum term not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court. [2001 2nd sp.s. c 12 § 338; 1993 c 140 § 2; 1969 c 98 § 7.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.126 On-site revocation hearing—Cooperation in providing facilities. All officers and employees of the state, counties, cities and political subdivisions of this state shall cooperate with the board in making available suitable facilities for conducting parole or community custody revocation hearings. [2001 2nd sp.s. c 12 § 339; 1969 c 98 § 8.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.130 Parole-revoked offender as escapee. From and after the suspension, cancellation, or revocation of the parole of any offender convicted of a crime committed before July 1, 1984, and until his or her return to custody the offender shall be deemed an escapee and a fugitive from justice. The indeterminate sentence review board may deny credit against the maximum sentence any time during which he or she is an escapee and fugitive from justice. [2001 2nd sp.s. c 12 § 340; 1993 c 140 § 3; 1955 c 133 § 14. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.140 Record of parolees—Privacy—Release of sex offender information—Immunity from liability—Cooperation by officials and employees. (1) The board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole or community custody. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. Subject to information sharing provisions related to offenders with mental illness and the end of sentence review committee, the board may make rules as to the privacy of such records and their use by others than the board and the department staff assigned to perform board-related duties. Sex offenders convicted of crimes committed before July 1, 1984, who are under the board's jurisdiction shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification. The board and the department staff assigned to perform board-related duties shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board and staff assigned to perform board-related duties such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board and staff assigned to perform board-related duties free access to all prisoners confined in the state correctional facilities.

(2) Offenders sentenced under RCW 9.94A.507 shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification.

(3) The end of sentence review committee shall make law enforcement notifications for offenders under board jurisdiction on the same basis that it notifies law enforcement regarding offenders sentenced under chapter 9.94A RCW for crimes committed after July 1, 1984. [2011 1st sp.s. c 40 § 19; 2009 c 28 § 29; 2001 2nd sp.s. c 12 § 341; 1992 c 7 § 27; 1990 c 3 § 126; 1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

(2012 Ed.)

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Washington state patrol identification and criminal history section: RCW 43.43.700 through 43.43.765.

Additional notes found at www.leg.wa.gov

9.95.143 Court-ordered treatment—Required disclosures. When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief. [2004 c 166 § 10.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.95.150 Rules and regulations. The board shall make all necessary rules and regulations to carry out the provisions of this chapter not inconsistent therewith, and may provide the forms of all documents necessary therefor. [1999 c 143 § 26; 1955 c 133 § 16. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.155 Rule making regarding sex offenders. See RCW 72.09.337.

9.95.160 Governor's powers not affected—Revocation of paroles granted by board. This chapter shall not limit or circumscribe the powers of the governor to commute the sentence of, or grant a pardon to, any convicted person, and the governor may cancel or revoke the parole granted to any convicted person by the board. The written order of the governor canceling or revoking such parole shall have the same force and effect and be executed in like manner as an order of the board. [1999 c 143 § 27; 1955 c 133 § 17. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.170 Board to inform itself as to each convict—Records from department of corrections. To assist it in fixing the duration of a convicted person's term of confinement, and in fixing the condition for release from custody on parole, it shall not only be the duty of the board to thoroughly inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The department of corrections and the institutions under its control shall make available to the board on request its case investigations, any file or other record, in order to assist the board in developing information for carrying out the purpose of this section. [1999 c 143 § 28; 1981 c 136 § 40; 1979 c 141 § 5; 1967 c 134 § 13; 1935 c 114 § 3; RRS § 10249-3.]

Additional notes found at www.leg.wa.gov

9.95.190 Application of RCW 9.95.010 through 9.95.170 to inmates previously committed. The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall apply to all convicted persons serving time in a state correctional facility for crimes committed before July 1, 1984, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof. [2001 2nd sp.s. c 12 § 342; 1992 c 7 § 28; 1983 c 3 § 10; 1955 c 133 § 18. Prior: (i) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part. (ii) 1947 c 92 § 2, part; Rem. Supp. 1947 § 10249-2a, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.200 Probation by court—Investigation by secretary of corrections. After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant, his or her prior record, and his or her family surroundings and environment. [2011 c 336 § 340; 1981 c 136 § 41; 1979 c 141 § 6; 1967 c 134 § 15; 1957 c 227 § 3. Prior: 1949 c 59 § 1; 1939 c 125 § 1, part; 1935 c 114 § 5; Rem. Supp. 1949 § 10249-5a.]

Rules of court: ER 410.

Suspending sentences: RCW 9.92.060.

Additional notes found at www.leg.wa.gov

9.95.204 Misdemeanant probation services—County supervision. (1) When a superior court places a defendant convicted of a misdemeanor or gross misdemeanor on probation and orders supervision under RCW 9.92.060 or 9.95.210, the department of corrections has responsibility for supervision of defendants pursuant to RCW 9.94A.501 and 9.94A.5011.

(2) A county legislative authority may assume responsibility for the supervision of defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and sentenced to probation by a superior court. If a county legislative authority chooses to assume responsibility for defendants supervised by the department, the assumption of responsibility shall be made by contract with the department of corrections on a biennial basis.

(3) The state of Washington, the department of corrections and its employees, community corrections officers, and volunteers who assist community corrections officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of a county. A county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of the department of corrections.

(4) The state of Washington, the department of corrections and its employees, community corrections officers, any county providing supervision services pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035.

(5)(a) If a misdemeanor probationer requests permission to travel or transfer to another state, the assigned probation officer employed or contracted for by the county shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the probation officer shall:

(i) Notify the department of corrections of the probationer's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;

(v) Resume supervision if the probationer returns to this state before the term of probation expires.

(b) The probationer shall receive credit for time served while being supervised by another state. [2011 1st sp.s. c 40 § 6. Prior: 2005 c 400 § 2; 2005 c 362 § 3; 1996 c 298 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

Effective date—2005 c 362: See note following RCW 9.94A.501.

9.95.210 Conditions of probation. (1)(a) Except as provided in (b) of this subsection in granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(b) For a defendant sentenced under RCW 46.61.5055, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension continue upon such conditions and for such time as the court shall designate, not to exceed five years. The court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. Any time

before entering an order terminating probation, the court may modify or revoke its order suspending the imposition or execution of the sentence if the defendant violates or fails to carry out any of the conditions of the suspended sentence.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary for up to twelve months. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(2012 Ed.)

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

(6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to sentences imposed under this section. [2012 1st sp.s. c 6 § 10; (2012 1st sp.s. c 6 § 9 expired August 1, 2012); 2012 c 183 § 4; 2011 1st sp.s. c 40 § 7; 2005 c 362 § 4; 1996 c 298 § 3; 1995 1st sp.s. c 19 § 29; 1995 c 33 § 6; 1993 c 251 § 3; 1992 c 86 § 1; 1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 § 16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

Effective date—2012 1st sp.s. c 6 § 10: "Section 10 of this act takes effect August 1, 2012." [2012 1st sp.s. c 6 § 17.]

Expiration date—2012 1st sp.s. c 6 § 9: "Section 9 of this act expires August 1, 2012." [2012 1st sp.s. c 6 § 16.]

Implementation—Application—2012 1st sp.s. c 6: See notes following RCW 9.94A.631.

Effective date—2012 c 183: See note following RCW 2.28.175.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2005 c 362: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Intent—1987 c 202: See note following RCW 2.04.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Restitution

alternative to fine: RCW 9A.20.030.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

Violations of probation conditions, rearrest, detention: RCW 72.04A.090.

Additional notes found at www.leg.wa.gov

9.95.214 Assessments and intake fees for supervision of misdemeanor probationers. Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by a county probation department, the county probation department may assess and collect from the defendant for the duration of the term of supervision a monthly assessment not to exceed one hundred dollars per month. Whenever a defendant convicted of a misdemeanor

or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by the department of corrections, the department may collect supervision intake fees pursuant to RCW 9.94A.780. This assessment shall be paid to the agency supervising the defendant and shall be applied, along with funds appropriated by the legislature, toward the payment or part payment of the cost of supervising the defendant. The county probation department shall suspend such assessment while the defendant is being supervised by another state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision. [2011 1st sp.s. c 40 § 11; 2005 c 400 § 3; 1996 c 298 § 4; 1995 1st sp.s. c 19 § 32.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

9.95.220 Violation of probation—Rearrest—Imprisonment. (1) Except as provided in subsection (2) of this section, whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his or her probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he or she shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed.

(2) If a probationer is being supervised by the department of corrections pursuant to RCW 9.95.204, the department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions. [2009 c 375 § 11; 1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

Application—2009 c 375: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.230 Court revocation or termination of probation. The court shall have authority at any time prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution

of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the probationer shall warrant it, terminate the period of probation, and discharge the person so held. [1982 1st ex.s. c 47 § 11; 1957 c 227 § 6. Prior: 1939 c 125 § 1, part; RRS § 10249-5d.]

Additional notes found at www.leg.wa.gov

9.95.240 Dismissal of information or indictment after probation completed—Vacation of conviction. (1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

(3) This section does not apply to chapter 18.130 RCW. [2008 c 134 § 27; 2003 c 66 § 1; 1957 c 227 § 7. Prior: 1939 c 125 § 1, part; RRS § 10249-5e.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

Additional notes found at www.leg.wa.gov

9.95.250 Community corrections officers. In order to carry out the provisions of this chapter 9.95 RCW the parole officers working under the supervision of the secretary of corrections shall be known as community corrections officers. [2001 2nd sp.s. c 12 § 343; 1981 c 136 § 43; 1979 c 141 § 8; 1967 c 134 § 17; 1957 c 227 § 8. Prior: 1939 c 125 § 1, part; RRS § 10249-5f.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

Additional notes found at www.leg.wa.gov

9.95.260 Indeterminate sentence review board—Supervision of conditionally pardoned persons—Hearing. (1) The indeterminate sentence review board shall, when requested by the governor, pass on the representations made in support of applications for pardons for convicted persons and make recommendations thereon to the governor.

(2) It will be the duty of the secretary of corrections to exercise supervision over such convicted persons as have been conditionally pardoned by the governor, to the end that such persons shall faithfully comply with the conditions of such pardons. The indeterminate sentence review board shall also pass on any representations made in support of applications for restoration of civil rights of convicted persons, and make recommendations to the governor. The department of corrections shall prepare materials and make investigations requested by the indeterminate sentence review board in order to assist the board in passing on the representations made in support of applications for pardon or for the restoration of civil rights.

(3) The board shall make no recommendations to the governor in support of an application for pardon until a public hearing has been held under this section or RCW 9.94A.885(3) upon the application. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that an application for pardon has been filed and the date and place at which the hearing on the application for pardon will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the application for pardon shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider written, oral, audio, or videotaped statements regarding the application for pardon received, personally or by representation, from the individuals who receive notice pursuant to this section. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [1999 c 323 § 4; 1999 c 143 § 29; 1981 c 136 § 44; 1979 c 141 § 9; 1967 c 134 § 14; 1935 c 114 § 7; RRS § 10249-7.]

Reviser's note: This section was amended by 1999 c 143 § 29 and by 1999 c 323 § 4, each without reference to the other. Both amendments are (2012 Ed.)

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1999 c 323: See note following RCW 9.94A.885.

Additional notes found at www.leg.wa.gov

9.95.265 Report to governor and legislature. The board shall transmit to the governor and to the legislature, as often as the governor may require it, a report of its work, in which shall be given such information as may be relevant. [1999 c 143 § 30; 1977 c 75 § 5; 1955 c 340 § 11. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.040.]

9.95.270 Compacts for out-of-state supervision of parolees or probationers—Uniform act. The governor of this state is hereby authorized to execute a compact on behalf of the state of Washington with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled "An Act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his or her family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his or her family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his or her coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he or she has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of

states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: PROVIDED, HOWEVER, That if at the time when a state seeks to retake a probationer or parolee there should be pending against him or her within the receiving state any criminal charge, or he or she should be suspected of having committed within such state a criminal offense, he or she shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states, party hereto. [2012 c 117 § 3; 1937 c 92 § 1; RRS § 10249-11.]

Interstate compact on juveniles: Chapter 13.24 RCW.

Additional notes found at www.leg.wa.gov

9.95.280 Return of parole violators from another state—Deputizing out-of-state officers. The secretary, upon recommendation by the board, may deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person convicted of a crime committed before July 1, 1984, who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state. [2011 1st sp.s. c 40 § 20; 2001 2nd sp.s. c 12 § 344; 1999 c 143 § 31; 1955 c 183 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.290 Return of parole violators from another state—Deputization procedure. Any deputization pursuant to this statute with regard to an offender convicted of a crime committed before July 1, 1984, shall be in writing and any person authorized to act as an agent of this state pursuant

hereto shall carry formal evidence of his or her deputization and shall produce the same upon demand. [2001 2nd sp.s. c 12 § 345; 1955 c 183 § 2.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.300 Return of parole violators from another state—Contracts to share costs. The secretary, upon recommendation by the board, may enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole, probation, or community custody as granted by this state. [2011 1st sp.s. c 40 § 21; 2001 2nd sp.s. c 12 § 346; 1999 c 143 § 32; 1955 c 183 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.310 Assistance for parolees, work release, and discharged prisoners—Declaration of purpose. The purpose of RCW 9.95.310 through 9.95.370 is to provide necessary assistance, other than assistance which is authorized to be provided under the vocational rehabilitation laws, Title 28A RCW, under the public assistance laws, Title 74 RCW or the employment security department or other state agency, for parolees, inmates assigned to work/training release facilities, discharged prisoners and persons convicted of a felony committed before July 1, 1984, and granted probation in need and whose capacity to earn a living under these circumstances is impaired; and to help such persons attain self-care and/or self-support for rehabilitation and restoration to independence as useful citizens as rapidly as possible thereby reducing the number of returnees to the institutions of this state to the benefit of such person and society as a whole. [2001 2nd sp.s. c 12 § 347; 1986 c 125 § 1; 1971 ex.s. c 31 § 1; 1961 c 217 § 2.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.320 Assistance for parolees, work release, and discharged prisoners—Subsistence payments—Terms and conditions. The secretary of corrections or his or her designee may provide to any parolee, inmate assigned to a work/training release facility, discharged prisoner and persons convicted of a felony committed before July 1, 1984, and granted probation in need and without necessary means, from any funds legally available therefor, such reasonable sums as he or she deems necessary for the subsistence of such person and his or her family until such person has become gainfully employed. Such aid may be made under such terms and conditions, and through local parole or probation officers if necessary, as the secretary of corrections or his or her designee may require and shall be supplementary to any moneys which may be provided under public assistance or from any other source. [2001 2nd sp.s. c 12 § 348; 1986 c 125 § 2; 1981 c 136 § 45; 1971 ex.s. c 31 § 2; 1961 c 217 § 3.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.330 Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures. The department of corrections may accept any devise, bequest, gift, grant, or contribution made for the purposes of RCW 9.95.310 through 9.95.370 and the secretary of corrections or his or her designee may make expenditures, or approve expenditures by local parole or probation officers, therefrom for the purposes of RCW 9.95.310 through 9.95.370 in accordance with the rules of the department of corrections. [2011 c 336 § 341; 1981 c 136 § 46; 1971 ex.s. c 31 § 3; 1961 c 217 § 4.]

Additional notes found at www.leg.wa.gov

9.95.340 Assistance for parolees, work release, and discharged prisoners—Use and repayment of funds belonging to absconders. Any funds in the hands of the department of corrections, or which may come into its hands, which belong to discharged prisoners, inmates assigned to work/training release facilities, parolees or persons convicted of a felony and granted probation who absconded, or whose whereabouts are unknown, shall be deposited in the community services revolving fund. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation who are without means to secure the same. All payments disbursed from these funds shall be repaid, whenever possible, by discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation for whose benefit they are made. Whenever any money belonging to such persons is so paid into the revolving fund, it shall be repaid to them in accordance with law if a claim therefor is filed with the department of corrections within five years of deposit into said fund and upon a clear showing of a legal right of such claimant to such money. This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 349; 1986 c 125 § 3; 1981 c 136 § 47; 1971 ex.s. c 31 § 4; 1961 c 217 § 5.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.350 Assistance for parolees, work release, and discharged prisoners—Use and accounting of funds or property. All money or other property paid or delivered to a community corrections officer or employee of the department of corrections by or for the benefit of any discharged prisoner, inmate assigned to a work/training release facility, parolee or persons convicted of a felony and granted probation shall be immediately transmitted to the department of corrections and it shall enter the same upon its books to his or her credit. Such money or other property shall be used only under the direction of the department of corrections.

If such person absconds, the money shall be deposited in the revolving fund created by RCW 9.95.360, and any other property, if not called for within one year, shall be sold by the

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department of corrections and the proceeds credited to the revolving fund.

If any person, files a claim within five years after the deposit or crediting of such funds, and satisfies the department of corrections that he or she is entitled thereto, the department may make a finding to that effect and may make payment to the claimant in the amount to which he or she is entitled.

This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 350; 1986 c 125 § 4; 1981 c 136 § 48; 1971 ex.s. c 31 § 5; 1961 c 217 § 6.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.360 Assistance for parolees, work release, and discharged prisoners—Community services revolving fund. The department of corrections shall create, maintain, and administer outside the state treasury a permanent revolving fund to be known as the "community services revolving fund" into which shall be deposited all moneys received by it under RCW 9.95.310 through 9.95.370 and any appropriation made for the purposes of RCW 9.95.310 through 9.95.370. All expenditures from this revolving fund shall be made by check or voucher signed by the secretary of corrections or his or her designee. The community services revolving fund shall be deposited by the department of corrections in such banks or financial institutions as it may select which shall give to the department a surety bond executed by a surety company authorized to do business in this state, or collateral eligible as security for deposit of state funds in at least the full amount of deposit.

This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 351; 1986 c 125 § 5; 1981 c 136 § 49; 1971 ex.s. c 31 § 6; 1961 c 217 § 7.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.370 Assistance for parolees and discharged prisoners—Repayment agreement. The secretary of corrections or his or her designee shall enter into a written agreement with every person receiving funds under RCW 9.95.310 through 9.95.370 that such person will repay such funds under the terms and conditions in said agreement. No person shall receive funds until such an agreement is validly made. This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 352; 1981 c 136 § 50; 1971 ex.s. c 31 § 7; 1961 c 217 § 8.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.420 Sex offenders—End of sentence review—Victim input. (1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an exami-

nation of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.704. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence. [2009 c 138 § 3; (2009 c 138 § 2 expired August 1, 2009); 2008 c 231 § 44; 2007 c 363 § 2; 2006 c 313 § 2; 2002 c 174 § 1; 2001 2nd sp.s. c 12 § 306.]

Effective date—2009 c 138 § 3: "Section 3 of this act takes effect August 1, 2009." [2009 c 138 § 7.]

Expiration date—2009 c 138 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 138 § 6.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2002 c 174: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 174 § 3.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.425 Sex offenders—Postrelease violations. (1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under RCW 9.95.420 has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.

(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.740. [2009 c 28 § 30; 2001 2nd sp.s. c 12 § 307.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.430 Sex offenders—Postrelease arrest. Any offender released under RCW 9.95.420 who is arrested and detained in physical custody by the authority of a community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order reinstating the offender's release on the same or modified conditions. All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process. [2001 2nd sp.s. c 12 § 308.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.435 Sex offenders—Postrelease transfer to more restrictive confinement. (1) If an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with findings and conclusions which include the evidence relied upon, and the reasons the particular sanction was imposed. The board shall notify the offender of the right to appeal the sanction and the right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The

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board or its designee shall make a determination whether probable cause exists to believe the violation or violations occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the presiding hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the presiding hearing officer.

(5) Within seven days after the presiding hearing officer's decision, the offender may appeal the decision to the full board or to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (a) The crime of conviction; (b) the violation committed; (c) the offender's risk of reoffending; or (d) the safety of the community.

(6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2007 c 363 § 3; 2003 c 218 § 1; 2002 c 175 § 17; 2001 2nd sp.s. c 12 § 309.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.440 Sex offenders—Reinstatement of release. In the event the board suspends the release status of an offender released under RCW 9.95.420 by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable under RCW 9.94A.704. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement. [2008 c 231 § 45; 2003 c 218 § 6; 2001 2nd sp.s. c 12 § 310.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.900 Application of certain laws to felonies committed before, on, or after certain dates. (1) Except as provided in subsection (2) of this section, the following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, 9.95.040, 9.95.045, 9.95.047, 9.95.052,

9.95.080, 9.95.100, 9.95.115, 9.95.116, 9.95.120, 9.95.124, 9.95.125, 9.95.130, 9.95.190, 9.95.200, 9.95.204, *9.95.206, 9.95.210, *9.95.212, 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

(2) The following sections apply to any felony offense committed before July 1, 1984, and to any offense sentenced under RCW 9.94A.507 and committed on or after July 1, 2001: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.300, and 9.96.050. [2009 c 28 § 31; 2001 2nd sp.s. c 12 § 353; 1981 c 137 § 32.]

*Reviser's note: RCW 9.95.206 and 9.95.212 were repealed by 2009 c 375 § 16.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

Chapter 9.96 RCW
RESTORATION OF CIVIL RIGHTS

Sections

- 9.96.010 Restoration of civil rights.
9.96.020 Form of certificate.
9.96.030 Certified copy—Recording and indexing.
9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.
9.96.060 Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons—Vacating records.

Governor

pardoning power: State Constitution Art. 3 § 9.
records to be kept: RCW 43.06.020.
remission of fines and forfeitures: State Constitution Art. 3 § 11.

Instrument restoring civil rights as evidence: RCW 5.44.090.
Report of indeterminate sentence review board: RCW 9.95.260.
Restoration of employment rights: Chapter 9.96A RCW.
Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.
Voting rights, loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

9.96.010 Restoration of civil rights. Whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his or her civil rights restored, the governor shall have the power, in his or her discretion, to restore to such person his or her civil rights in the manner as in this chapter provided. [2011 c 336 § 342; 1961 c 187 § 2; 1931 c 19 § 1; 1929 c 26 § 2; RRS § 10250.]

9.96.020 Form of certificate. Whenever the governor shall determine to restore his or her civil rights to any person convicted of an infamous crime in any superior court of this state, he or she shall execute and file in the office of the secretary of state an instrument in writing in substantially the following form:

"To the People of the State of Washington
Greeting:
I, the undersigned Governor of the State of Washington, by virtue of the power vested in my office by the constitution and laws of the State of Washington, do by these presents restore to . . . his or her civil rights forfeited by him (or her) by reason of his (or her) conviction of the crime of . . . (naming it) in the Superior Court for the County of . . . , on to-wit: The . . . day of . . . , 19 . . .
Dated the . . . day of . . . , 19 . . .
(Signed) . . .
Governor of Washington."

[2012 c 117 § 4; 2011 c 336 § 343; 1931 c 19 § 2; 1929 c 26 § 3; RRS § 10251.]

9.96.030 Certified copy—Recording and indexing. Upon the filing of an instrument restoring civil rights in his or her office, it shall be the duty of the secretary of state to transmit a duly certified copy thereof to the clerk of the superior court named therein, who shall record the same in the journal of the court and index the same in the execution docket of the cause in which the conviction was had. [2011 c 336 § 344; 1931 c 19 § 3; 1929 c 26 § 4; RRS § 10252.]

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected. (1)(a) When an offender on parole has performed all obligations of his or her release, including any and all legal financial obligations, for such time as shall satisfy the indeterminate sentence review board that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the offender.

(b) The board retains the jurisdiction to issue a certificate of discharge after the expiration of the offender's or parolee's maximum statutory sentence. If not earlier granted and any and all legal financial obligations have been paid, the board shall issue a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years.

(c) The discharge, regardless of when issued, shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certification of discharge shall so state.

(d) This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

(e) The board shall issue a certificate of discharge to the offender in person or by mail to the offender's last known address.

(2) A copy of every signed certificate of discharge for offender sentences under the authority of the department of corrections shall be placed in the department's files.

(3) The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [2011 1st sp.s. c 40 § 22; 2009 c 325 § 4. Prior: 2007 c 363 § 4; 2007

c 171 § 2; 2002 c 16 § 3; 1993 c 140 § 4; 1980 c 75 § 1; 1961 c 187 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—2002 c 16: See note following RCW 9.94A.637.

9.96.060 Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons—Vacating records. (1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense;

(c) The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), 9.91.020 (operating a railroad, etc. while intoxicated), or the offense is considered a "prior offense" under RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;

(d) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);

(e) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family member or household member against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

(i) The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;

(ii) The applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

(iii) The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or

(iv) Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;

(f) For any offense other than those described in (e) of this subsection, less than three years have passed since the person completed the terms of the sentence, including any financial obligations;

(g) The offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;

(h) The applicant has ever had the record of another conviction vacated; or

(i) The applicant is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

(3) Every person convicted of prostitution under RCW 9A.88.030 who committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;

(b) The offender has been convicted of another crime in this state, another state, or federal court since the date of conviction; or

(c) The applicant has ever had the record of another prostitution conviction vacated.

(4) Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under subsection (1) of this section may state that he or she has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(5) All costs incurred by the court and probation services shall be paid by the person making the motion to vacate the

record unless a determination is made pursuant to chapter 10.101 RCW that the person making the motion is indigent, at the time the motion is brought.

(6) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2012 c 183 § 5; 2012 c 142 § 2; 2001 c 140 § 1.]

Reviser's note: This section was amended by 2012 c 142 § 2 and by 2012 c 183 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2012 c 183: See note following RCW 2.28.175.

Chapter 9.96A RCW RESTORATION OF EMPLOYMENT RIGHTS

Sections

9.96A.010	Legislative declaration.
9.96A.020	Employment, occupational licensing by public entity—Prior felony conviction no disqualification—Exceptions.
9.96A.030	Exclusion—Law enforcement agencies.
9.96A.040	Violations—Adjudication pursuant to administrative procedure act.
9.96A.050	Provisions of chapter prevailing.
9.96A.060	Exclusion—Employees dealing with children or vulnerable persons.
9.96A.900	Effective date—1973 c 135.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Restoration of civil rights: Chapter 9.96 RCW.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.96A.010 Legislative declaration. The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship. [1973 c 135 § 1.]

9.96A.020 Employment, occupational licensing by public entity—Prior felony conviction no disqualification—Exceptions. (1) Subject to the exceptions in subsections (3) through (5) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any

of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. However, for positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony crime specified under RCW 28A.400.322, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony crime specified under RCW 28A.400.322, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) The provisions of this chapter do not apply to issuance of licenses or credentials for professions regulated under chapter 18.130 RCW.

(6) Subsections (3) and (4) of this section as they pertain to felony crimes specified under RCW 28A.400.322(1) apply to a person applying for a certificate or for employment on or after July 25, 1993, and before July 26, 2009. Subsections (3) and (4) of this section as they pertain to all felony crimes specified under RCW 28A.400.322(2) apply to a person applying for a certificate or for employment on or after July 26, 2009. Subsection (5) of this section only applies to a person applying for a license or credential on or after June 12, 2008. [2009 c 396 § 7; 2008 c 134 § 26; 1999 c 16 § 1; 1993 c 71 § 1; 1973 c 135 § 2.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Intent—1993 c 71: "The legislature reaffirms its singular intent that this act shall not affect the duties imposed or powers conferred on the office of the superintendent of public instruction by RCW 28A.410.090." [1993 c 71 § 2.]

9.96A.030 Exclusion—Law enforcement agencies. This chapter shall not be applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth in this chapter. [1973 c 135 § 3.]

9.96A.040 Violations—Adjudication pursuant to administrative procedure act. Any complaints or grievances concerning the violation of this chapter shall be processed and adjudicated in accordance with the procedures set forth in chapter 34.05 RCW, the administrative procedure act. [1973 c 135 § 4.]

9.96A.050 Provisions of chapter prevailing. The provisions of this chapter shall prevail over any other provisions of law which purport to govern the denial of licenses, permits, certificates, registrations, or other means to engage in a business, on the grounds of a lack of good moral character, or which purport to govern the suspension or revocation of such a license, permit, certificate, or registration on the grounds of conviction of a crime. [1973 c 135 § 5.]

9.96A.060 Exclusion—Employees dealing with children or vulnerable persons. This chapter is not applicable to the department of social and health services when employing a person, who in the course of his or her employment, has or may have unsupervised access to any person who is under the age of eighteen, who is under the age of twenty-one and has been sentenced to a term of confinement under the supervision of the department of social and health services under chapter 13.40 RCW, who is a vulnerable adult under chapter 74.34 RCW, or who is a vulnerable person. For purposes of this section "vulnerable person" means an adult of any age who lacks the functional, mental, or physical ability to care for himself or herself. [2001 c 296 § 2.]

Intent—2001 c 296: "It is the intent of the legislature to authorize the department of social and health services to investigate the background of current and future department employees to the same extent and with the same effect as it has authorized the state to investigate the background and exclude from the provision of service current and future care providers, contractors, volunteers, and others. The department of social and health services must coordinate with the department of personnel to develop rules that address the procedures for undertaking background checks, and specifically what action would be taken against a current employee who is disqualified from his or her current position because of a background check not previously performed." [2001 c 296 § 1.]

9.96A.900 Effective date—1973 c 135. This act shall take effect on July 1, 1973. [1973 c 135 § 7.]

Chapter 9.98 RCW

PRISONERS—UNTRIED INDICTMENTS, INFORMATIONS, COMPLAINTS

Sections

9.98.010	Disposition of untried indictment, information, complaint—Procedure—Escape, effect.
9.98.020	Loss of jurisdiction and failure of indictment, information, complaint—Dismissal.
9.98.030	Chapter not applicable to mentally ill.
9.98.040	Court not prohibited from ordering prisoner to trial.

9.98.010 Disposition of untried indictment, information, complaint—Procedure—Escape, effect. (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he or she shall be brought to trial within one hundred twenty days after he or she shall

(2012 Ed.)

have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the superintendent has knowledge and of his or her right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his or her execution of the request for final disposition referred to in subsection (1) of this section shall void the request. [2011 c 336 § 345; 1999 c 143 § 33; 1959 c 56 § 1.]

9.98.020 Loss of jurisdiction and failure of indictment, information, complaint—Dismissal. In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. [1959 c 56 § 2.]

9.98.030 Chapter not applicable to mentally ill. The provisions of this chapter shall not apply to any person adjudged to be mentally ill. [1959 c 56 § 3.]

9.98.040 Court not prohibited from ordering prisoner to trial. This chapter shall not be construed as preempting the right of the superior court on the motion of the county prosecuting attorney from ordering the superintendent of a state penal or correctional institution to cause a prisoner to be transported to the superior court of the county for trial upon any untried indictment, information or complaint. [1959 c 56 § 4.]

Chapter 9.100 RCW AGREEMENT ON DETAINERS

Sections

9.100.010	Agreement on detainers—Text.
9.100.020	Appropriate court defined.

- 9.100.030 Courts, state and political subdivisions enjoined to enforce agreement.
 9.100.040 Escape—Effect.
 9.100.050 Giving over inmate authorized.
 9.100.060 Administrator—Appointment.
 9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights.
 9.100.080 Copies of chapter—Transmission.

Untried indictments, informations, complaints—Disposition: Chapter 9.98 RCW.

9.100.010 Agreement on detainers—Text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

TEXT OF THE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment,

information or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: PROVIDED, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: PROVIDED FURTHER, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state

shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(i) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(ii) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing

herein contained shall be construed to alter or effect [affect] any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1967 c 34 § 1.]

9.100.020 Appropriate court defined. The phrase "appropriate court" as used in the agreement on detainees shall, with reference to the courts of this state, mean any court with criminal jurisdiction. [1967 c 34 § 2.]

9.100.030 Courts, state and political subdivisions enjoined to enforce agreement. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainees and to cooperate with one another and with other

party states in enforcing the agreement and effectuating its purposes. [1967 c 34 § 3.]

9.100.040 Escape—Effect. Escape from custody while in another state pursuant to the agreement on detainees shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainees and shall be punishable in the same manner as an escape from said institution. [1967 c 34 § 4.]

9.100.050 Giving over inmate authorized. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainees. [1967 c 34 § 5.]

9.100.060 Administrator—Appointment. The governor is hereby authorized and empowered to designate and appoint a state officer to act as the administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the agreement on detainees. [1967 c 34 § 6.]

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights. In order to implement Article IV(a) of the agreement on detainees, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him or her in writing of his or her rights to counsel, to make representations to the governor within thirty days, and to contest the legality of his or her delivery. [2011 c 336 § 346; 1967 c 34 § 7.]

9.100.080 Copies of chapter—Transmission. Copies of this chapter shall, upon its approval, be transmitted by the secretary of state to the governor of each state, to the attorney general and the secretary of state of the United States, and the council of state governments. [1967 c 34 § 8.]

Chapter 9.101 RCW CRIMINAL STREET GANG DEFINITIONS— STATE PREEMPTION

Sections

9.101.010 Criminal street gang definitions—State preemption.

9.101.010 Criminal street gang definitions—State preemption. (1) The state of Washington hereby fully occupies and preempts the entire field of definitions used for purposes of substantive criminal law relating to criminal street gangs, criminal street gang-related offenses, criminal street gang associates and members, and pattern of criminal street gang activity. These definitions of "criminal street gang," "criminal street gang associate or member," "criminal street

gang-related offense," and "pattern of criminal street gang activity" contained in RCW 9.94A.030 expressly preempt any conflicting city or county codes or ordinances. Cities, towns, counties, or other municipalities may enact laws and ordinances relating to criminal street gangs that contain definitions that are consistent with definitions pursuant to RCW 9.94A.030. Local laws and ordinances that are inconsistent with the definitions shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

(2) The preemption provided in this chapter does not apply to "gang" as defined in RCW 28A.600.455 under the common school provisions act or "gang" as defined in RCW 59.18.030 under the landlord-tenant act.

(3) The preemption provided for in this chapter does not restrict the adoption or use of a uniform state definition of "gang," "gang member," or "gang associate," for purposes of the creation and maintenance of the statewide gang database for law enforcement intelligence purposes under RCW 43.43.762. [2008 c 276 § 401.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Title 9A

WASHINGTON CRIMINAL CODE

Chapters

- 9A.04 Preliminary article.
- 9A.08 Principles of liability.
- 9A.12 Insanity.
- 9A.16 Defenses.
- 9A.20 Classification of crimes.
- 9A.28 Anticipatory offenses.
- 9A.32 Homicide.
- 9A.36 Assault—Physical harm.
- 9A.40 Kidnapping, unlawful imprisonment, and custodial interference.
- 9A.42 Criminal mistreatment.
- 9A.44 Sex offenses.
- 9A.46 Harassment.
- 9A.48 Arson, reckless burning, and malicious mischief.
- 9A.49 Lasers.
- 9A.50 Interference with health care facilities or providers.
- 9A.52 Burglary and trespass.
- 9A.56 Theft and robbery.
- 9A.58 Identification documents.
- 9A.60 Fraud.
- 9A.61 Defrauding a public utility.
- 9A.64 Family offenses.
- 9A.68 Bribery and corrupt influence.
- 9A.72 Perjury and interference with official proceedings.
- 9A.76 Obstructing governmental operation.
- 9A.80 Abuse of office.
- 9A.82 Criminal profiteering act.
- 9A.83 Money laundering.
- 9A.84 Public disturbance.
- 9A.88 Indecent exposure—Prostitution.
- 9A.98 Laws repealed.

Crimes and punishments: Title 9 RCW.

Explosives: Chapter 70.74 RCW.

Harassment: Chapter 10.14 RCW.

Chapter 9A.04 RCW PRELIMINARY ARTICLE

Sections

- 9A.04.010 Title, effective date, application, severability, captions.
- 9A.04.020 Purposes—Principles of construction.
- 9A.04.030 State criminal jurisdiction.
- 9A.04.040 Classes of crimes.
- 9A.04.050 People capable of committing crimes—Capability of children.
- 9A.04.060 Common law to supplement statute.
- 9A.04.070 Who amenable to criminal statutes.
- 9A.04.080 Limitation of actions.
- 9A.04.090 Application of general provisions of the code.
- 9A.04.100 Proof beyond a reasonable doubt.
- 9A.04.110 Definitions.

9A.04.010 Title, effective date, application, severability, captions. (1) This title shall be known and may be cited as the Washington Criminal Code and shall become effective on July 1, 1976.

(2) The provisions of this title shall apply to any offense committed on or after July 1, 1976, which is defined in this title or the general statutes, unless otherwise expressly provided or unless the context otherwise requires, and shall also apply to any defense to prosecution for such an offense.

(3) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to July 1, 1976, or to the construction and application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this title had not been enacted.

(4) If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this title are declared to be severable.

(5) Chapter, section, and subsection captions are for organizational purposes only and shall not be construed as part of this title. [1975 1st ex.s. c 260 § 9A.04.010.]

Additional notes found at www.leg.wa.gov

9A.04.020 Purposes—Principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or public interests;

(b) To safeguard conduct that is without culpability from condemnation as criminal;

(c) To give fair warning of the nature of the conduct declared to constitute an offense;

(d) To differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

(2) The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title. [1975 1st ex.s. c 260 § 9A.04.020.]

9A.04.030 State criminal jurisdiction. The following persons are liable to punishment:

(1) A person who commits in the state any crime, in whole or in part.

(2) A person who commits out of the state any act which, if committed within it, would be theft and is afterward found in the state with any of the stolen property.

(3) A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.

(4) A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the

place where the act is committed, and brings, sends, or conveys such person into this state.

(5) A person who commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime.

(6) A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury.

(7) A person who commits an act onboard a conveyance within the state of Washington, including the airspace over the state of Washington, that subsequently lands, docks, or stops within the state which, if committed within the state, would be a crime. [1999 c 349 § 1; 1981 c 187 § 2; 1975 1st ex.s. c 260 § 9A.04.030.]

9A.04.040 Classes of crimes. (1) An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.

(2) A crime is a felony if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for a term in excess of one year. A crime is a misdemeanor if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for no more than ninety days. Every other crime is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.04.040.]

9A.04.050 People capable of committing crimes—Capability of children. Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age. [2011 c 336 § 347; 1975 1st ex.s. c 260 § 9A.04.050.]

9A.04.060 Common law to supplement statute. The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense. [1975 1st ex.s. c 260 § 9A.04.060.]

9A.04.070 Who amenable to criminal statutes. Every person, regardless of whether or not he or she is an inhabitant of this state, may be tried and punished under the laws of this state for an offense committed by him or her therein, except when such offense is cognizable exclusively in the courts of the United States. [2011 c 336 § 348; 1975 1st ex.s. c 260 § 9A.04.070.]

9A.04.080 Limitation of actions. (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Homicide by abuse;
- (iii) Arson if a death results;
- (iv) Vehicular homicide;
- (v) Vehicular assault if a death results;
- (vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to the victim's twenty-eighth birthday.

(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (I) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (II) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes may be prosecuted up to the victim's twenty-eighth birthday: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, *9A.44.070, 9A.44.080, 9A.44.100(1)(b), 9A.44.079, 9A.44.089, or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission or their discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;

(ii) Any felony violation of chapter 9A.83 RCW;

(iii) Any felony violation of chapter 9.35 RCW;

(iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception; or

(v) Trafficking in stolen property in the first or second degree under chapter 9A.82 RCW in which the stolen property is a motor vehicle or major component part of a motor vehicle as defined in RCW 46.80.010.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside. [2012 c 105 § 1. Prior: 2009 c 61 § 1; 2009 c 53 § 1; 2006 c 132 § 1; 1998 c 221 § 2; prior: 1997 c 174 § 1; 1997 c 97 § 1; prior: 1995 c 287 § 5; 1995 c 17 § 1; 1993 c 214 § 1; 1989 c 317 § 3; 1988 c 145 § 14; prior: 1986 c 257 § 13; 1986 c 85 § 1; prior: 1985 c 455 § 19; 1985 c 186 § 1; 1984 c 270 § 18; 1982 c 129 § 1; 1981 c 203 § 1; 1975 1st ex.s. c 260 § 9A.04.080.]

***Reviser's note:** RCW 9A.44.070 and 9A.44.080 were repealed by 1988 c 145 § 24.

Intent—1989 c 317: See note following RCW 4.16.340.

Additional notes found at www.leg.wa.gov

9A.04.090 Application of general provisions of the code. The provisions of chapters 9A.04 through 9A.28 RCW of this title are applicable to offenses defined by this title or another statute, unless this title or such other statute specifically provides otherwise. [1975 1st ex.s. c 260 § 9A.04.090.]

9A.04.100 Proof beyond a reasonable doubt. (1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest degree. [2011 c 336 § 349; 1975 1st ex.s. c 260 § 9A.04.100.]

9A.04.110 Definitions. In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person," "he or she," and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

(28) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

(29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(30) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular. [2011 c 336 § 350; 2011 c 166 § 2; 2007 c 79 § 3; 2005 c 458 § 3; 1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Reviser's note: This section was amended by 2011 c 166 § 2 and by 2011 c 336 § 350, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2007 c 79: See note following RCW 9A.36.021.

Additional notes found at www.leg.wa.gov

Chapter 9A.08 RCW PRINCIPLES OF LIABILITY

Sections

9A.08.010	General requirements of culpability.
9A.08.020	Liability for conduct of another—Complicity.
9A.08.030	Corporate and personal liability.

9A.08.010 General requirements of culpability. (1) Kinds of Culpability Defined.

(a) **INTENT.** A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) **KNOWLEDGE.** A person knows or acts knowingly or with knowledge when:

(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) **RECKLESSNESS.** A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

(d) **CRIMINAL NEGLIGENCE.** A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negli-

gence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. [2009 c 549 § 1002; 1975 1st ex.s. c 260 § 9A.08.010.]

9A.08.020 Liability for conduct of another—Complicity. (1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He or she is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or

(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

(4) A person who is legally incapable of committing a particular crime himself or herself may be guilty thereof if it is committed by the conduct of another person for which he or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

(a) He or she is a victim of that crime; or

(b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the

person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. [2011 c 336 § 351; 1975-'76 2nd ex.s. c 38 § 1; 1975 1st ex.s. c 260 § 9A.08.020.]

Additional notes found at www.leg.wa.gov

9A.08.030 Corporate and personal liability. (1) As used in this section:

(a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;

(b) "Corporation" includes a joint stock association;

(c) "High managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(2) A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment and on behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his or her employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

(3) A person is criminally liable for conduct constituting an offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he or she has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

(5) Every corporation, whether foreign or domestic, which shall violate any provision of RCW 9A.28.040, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this subsection. [2011 c 336 § 352; 1975 1st ex.s. c 260 § 9A.08.030.]

Chapter 9A.12 RCW INSANITY

Sections

9A.12.010 Insanity.

9A.12.010 Insanity. To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or

(b) He or she was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence. [2011 c 336 § 353; 1975 1st ex.s. c 260 § 9A.12.010.]

Chapter 9A.16 RCW DEFENSES

Sections

9A.16.010	Definitions.
9A.16.020	Use of force—When lawful.
9A.16.030	Homicide—When excusable.
9A.16.040	Justifiable homicide or use of deadly force by public officer, peace officer, person aiding.
9A.16.050	Homicide—By other person—When justifiable.
9A.16.060	Duress.
9A.16.070	Entrapment.
9A.16.080	Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
9A.16.090	Intoxication.
9A.16.100	Use of force on children—Policy—Actions presumed unreasonable.
9A.16.110	Defending against violent crime—Reimbursement.
9A.16.120	Outdoor music festival, campground—Detention.
9A.16.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

9A.16.010 Definitions. In this chapter, unless a different meaning is plainly required:

(1) "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

(2) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. [1986 c 209 § 1; 1975 1st ex.s. c 260 § 9A.16.010.]

9A.16.020 Use of force—When lawful. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner

to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;

(6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person. [1986 c 149 § 2; 1979 ex.s. c 244 § 7; 1977 ex.s. c 80 § 13; 1975 1st ex.s. c 260 § 9A.16.020.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

9A.16.030 Homicide—When excusable. Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent. [1979 ex.s. c 244 § 8; 1975 1st ex.s. c 260 § 9A.16.030.]

Additional notes found at www.leg.wa.gov

9A.16.040 Justifiable homicide or use of deadly force by public officer, peace officer, person aiding. (1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer is acting in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

(c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the cir-

cumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section. [1986 c 209 § 2; 1975 1st ex.s. c 260 § 9A.16.040.]

Legislative recognition: "The legislature recognizes that RCW 9A.16.040 establishes a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the authority of RCW 9.01.200, 9A.16.020, or 9A.16.050 is not restricted and remains broader than the limitations imposed on peace officers." [1986 c 209 § 3.]

9A.16.050 Homicide—By other person—When justifiable. Homicide is also justifiable when committed either:

(1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is. [2011 c 336 § 354; 1975 1st ex.s. c 260 § 9A.16.050.]

9A.16.060 Duress. (1) In any prosecution for a crime, it is a defense that:

(a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous bodily injury; and

(b) That such apprehension was reasonable upon the part of the actor; and

(c) That the actor would not have participated in the crime except for the duress involved.

(2) The defense of duress is not available if the crime charged is murder, manslaughter, or homicide by abuse.

(3) The defense of duress is not available if the actor intentionally or recklessly places himself or herself in a situation in which it is probable that he or she will be subject to duress.

(4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse. [1999 c 60 § 1; 1975 1st ex.s. c 260 § 9A.16.060.]

9A.16.070 Entrapment. (1) In any prosecution for a crime, it is a defense that:

(a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and

(b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.

(2) The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime. [1975 1st ex.s. c 260 § 9A.16.070.]

9A.16.080 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, by the owner of the mercantile establishment, or by the owner's authorized employee or agent, and that such peace officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [1975 1st ex.s. c 260 § 9A.16.080.]

9A.16.090 Intoxication. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his or her intoxication may be taken into consideration in determining such mental state. [2011 c 336 § 355; 1975 1st ex.s. c 260 § 9A.16.090.]

9A.16.100 Use of force on children—Policy—Actions presumed unreasonable. It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is

authorized in advance by the child’s parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child’s breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive. [1986 c 149 § 1.]

9A.16.110 Defending against violent crime—Reimbursement. (1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other violent crime as defined in RCW 9.94A.030.

(2) When a person charged with a crime listed in subsection (1) of this section is found not guilty by reason of self-defense, the state of Washington shall reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense. This reimbursement is not an independent cause of action. To award these reasonable costs the trier of fact must find that the defendant’s claim of self-defense was sustained by a preponderance of the evidence. If the trier of fact makes a determination of self-defense, the judge shall determine the amount of the award.

(3) Notwithstanding a finding that a defendant’s actions were justified by self-defense, if the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct.

Nothing in this section precludes the legislature from using the sundry claims process to grant an award where none was granted under this section or to grant a higher award than one granted under this section.

(4) Whenever the issue of self-defense under this section is decided by a judge, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) [(5)] of this section.

(5) Whenever the issue of self-defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | | |
|----|---|-------|
| | answer | |
| | yes or no | |
| 1. | Was the finding of not guilty based upon self-defense? | ..... |
| 2. | If your answer to question 1 is no, do not answer the remaining question. | |

3. If your answer to question 1 is yes, was the defendant:
 - a. Protecting himself or herself?
 - b. Protecting his or her family?
 - c. Protecting his or her property?
 - d. Coming to the aid of another who was in imminent danger of a heinous crime?
 - e. Coming to the aid of another who was the victim of a heinous crime?
 - f. Engaged in criminal conduct substantially related to the events giving rise to the crime with which the defendant is charged?

[1995 c 44 § 1; 1989 c 94 § 1; 1977 ex.s. c 206 § 8. Formerly RCW 9.01.200.]

Use of deadly force—Legislative recognition: See note following RCW 9A.16.040.

9A.16.120 Outdoor music festival, campground—Detention. (1) In a criminal action brought against the detainer by reason of a person having been detained on or in the immediate vicinity of the premises of an outdoor music festival or related campground for the purpose of pursuing an investigation or questioning by a law enforcement officer as to the lawfulness of the consumption or possession of alcohol or illegal drugs, it is a defense that the detained person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, and that a peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess, alcohol or illegal drugs on the premises.

(2) For the purposes of this section:

(a) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the person detained does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the person does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(b) "Outdoor music festival" has the same meaning as in RCW 70.108.020, except that no minimum time limit is required.

(c) "Reasonable grounds" include, but are not limited to:

(i) Exhibiting the effects of having consumed liquor, which means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(A) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(B) Is shown by other evidence to have recently consumed liquor; or

(ii) Exhibiting the effects of having consumed an illegal drug, which means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and either:

(A) Is in possession of an illegal drug; or

(B) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to allow a law enforcement officer to determine the lawfulness of the consumption or possession of alcohol or illegal drugs. "Reasonable time" may not exceed one hour. [2003 c 219 § 1.]

9A.16.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 22.]

Chapter 9A.20 RCW

CLASSIFICATION OF CRIMES

Sections

9A.20.010	Classification and designation of crimes.
9A.20.020	Authorized sentences for crimes committed before July 1, 1984.
9A.20.021	Maximum sentences for crimes committed July 1, 1984, and after.
9A.20.030	Alternative to a fine—Restitution.
9A.20.040	Prosecutions related to felonies defined outside Title 9A RCW.

Assessments required of convicted persons
offender supervision: RCW 9.94A.780.
parolees: RCW 72.04A.120.
probationers: RCW 10.64.120.

9A.20.010 Classification and designation of crimes.

(1) Classified Felonies. (a) The particular classification of each felony defined in Title 9A RCW is expressly designated in the section defining it.

(b) For purposes of sentencing, classified felonies are designated as one of three classes, as follows:

- (i) Class A felony; or
- (ii) Class B felony; or
- (iii) Class C felony.

(2) Misdemeanors and Gross Misdemeanors. (a) Any crime punishable by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety days, or by both such fine and imprisonment is a misdemeanor. Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor.

(2012 Ed.)

(b) All crimes other than felonies and misdemeanors are gross misdemeanors. [1984 c 258 § 808; 1975 1st ex.s. c 260 § 9A.20.010.]

Additional notes found at www.leg.wa.gov

9A.20.020 Authorized sentences for crimes committed before July 1, 1984. (1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine;

(b) For a class B felony, by imprisonment in a state correctional institution for a maximum term of not more than ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such imprisonment and fine;

(c) For a class C felony, by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, or by both such imprisonment and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed prior to July 1, 1984. [2011 c 96 § 12; 1982 c 192 § 9; 1981 c 137 § 37; 1975-'76 2nd ex.s. c 38 § 2; 1975 1st ex.s. c 260 § 9A.20.020.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

Additional notes found at www.leg.wa.gov

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount

fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984. [2011 c 96 § 13. Prior: 2003 c 288 § 7; 2003 c 53 § 63; 1982 c 192 § 10.]

Findings—Intent—2011 c 96: "The legislature finds that a maximum sentence by a court in the state of Washington for a gross misdemeanor can, under federal law, result in the automatic deportation of a person who has lawfully immigrated to the United States, is a victim of domestic violence or a political refugee, even when all or part of the sentence to total confinement is suspended. The legislature further finds that this is a disproportionate outcome, when compared to a person who has been convicted of certain felonies which, under the state's determinate sentencing law, must be sentenced to less than one year and, hence, either have no impact on that person's residency status or will provide that person an opportunity to be heard in immigration proceedings where the court will determine whether deportation is appropriate. Therefore, it is the intent of the legislature to cure this inequity by reducing the maximum sentence for a gross misdemeanor by one day." [2011 c 96 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

9A.20.030 Alternative to a fine—Restitution. (1) If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, the court, in lieu of imposing the fine authorized for the offense under RCW 9A.20.020, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court. It shall be the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court shall make a finding as to the amount of the defendant's gain or victim's loss from the crime, and if the record does not contain sufficient evidence to support such finding the court may conduct a hearing upon the issue. For purposes of this section, the terms "gain" or "loss" refer to the amount of money or the value of property or services gained or lost.

(2) Notwithstanding any other provision of law, this section also applies to any corporation or joint stock association found guilty of any crime. [1982 1st ex.s. c 47 § 12; 1979 c 29 § 3; 1975 1st ex.s. c 260 § 9A.20.030.]

Restitution

condition of probation: RCW 9.95.210.

condition to suspending sentence: RCW 9.92.060.

disposition when victim dead or not found: RCW 7.68.290.

Additional notes found at www.leg.wa.gov

9A.20.040 Prosecutions related to felonies defined outside Title 9A RCW. In any prosecution under this title where the grade or degree of a crime is determined by reference to the degree of a felony for which the defendant or another previously had been sought, arrested, charged, convicted, or sentenced, if such felony is defined by a statute of this state which is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this title;

(2) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this title;

(3) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this title. [1975 1st ex.s. c 260 § 9A.20.040.]

Chapter 9A.28 RCW

ANTICIPATORY OFFENSES

Sections

9A.28.010	Prosecutions based on felonies defined outside Title 9A RCW.
9A.28.020	Criminal attempt.
9A.28.030	Criminal solicitation.
9A.28.040	Criminal conspiracy.

9A.28.010 Prosecutions based on felonies defined outside Title 9A RCW. In any prosecution under this title for attempt, solicitation, or conspiracy to commit a felony defined by a statute of this state which is not in this title, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this title;

(2) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is eight years or more but less than twenty years, such felony shall be treated as a class B felony for purposes of this title;

(3) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this title. [1975 1st ex.s. c 260 § 9A.28.010.]

9A.28.020 Criminal attempt. (1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have

been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree, murder in the second degree, arson in the first degree, child molestation in the first degree, indecent liberties by forcible compulsion, rape in the first degree, rape in the second degree, rape of a child in the first degree, or rape of a child in the second degree;

(b) Class B felony when the crime attempted is a class A felony other than an offense listed in (a) of this subsection;

(c) Class C felony when the crime attempted is a class B felony;

(d) Gross misdemeanor when the crime attempted is a class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor. [2001 2nd sp.s. c 12 § 354; 1994 c 271 § 101; 1981 c 203 § 3; 1975 1st ex.s. c 260 § 9A.28.020.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Purpose—1994 c 271: "The purpose of chapter 271, Laws of 1994 is to make certain technical corrections and correct oversights discovered only after unanticipated circumstances have arisen. These changes are necessary to give full expression to the original intent of the legislature." [1994 c 271 § 1.]

Additional notes found at www.leg.wa.gov

9A.28.030 Criminal solicitation. (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

(2) Criminal solicitation shall be punished in the same manner as criminal attempt under RCW 9A.28.020. [2011 c 336 § 356; 1975 1st ex.s. c 260 § 9A.28.030.]

9A.28.040 Criminal conspiracy. (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

(2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

- (a) Has not been prosecuted or convicted; or
- (b) Has been convicted of a different offense; or
- (c) Is not amenable to justice; or
- (d) Has been acquitted; or
- (e) Lacked the capacity to commit an offense; or
- (f) Is a law enforcement officer or other government agent who did not intend that a crime be committed.

(3) Criminal conspiracy is a:

(a) Class A felony when an object of the conspiratorial agreement is murder in the first degree;

(b) Class B felony when an object of the conspiratorial agreement is a class A felony other than murder in the first degree;

(2012 Ed.)

(c) Class C felony when an object of the conspiratorial agreement is a class B felony;

(d) Gross misdemeanor when an object of the conspiratorial agreement is a class C felony;

(e) Misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor. [1997 c 17 § 1; 1975 1st ex.s. c 260 § 9A.28.040.]

Chapter 9A.32 RCW HOMICIDE

Sections

9A.32.010	Homicide defined.
9A.32.020	Premeditation—Limitations.
9A.32.030	Murder in the first degree.
9A.32.040	Murder in the first degree—Sentence.
9A.32.050	Murder in the second degree.
9A.32.055	Homicide by abuse.
9A.32.060	Manslaughter in the first degree.
9A.32.070	Manslaughter in the second degree.

Capital punishment—Aggravated first degree murder: Chapter 10.95 RCW.

Controlled substances homicide: RCW 69.50.415.

9A.32.010 Homicide defined. Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide. [1997 c 196 § 3; 1987 c 187 § 2; 1983 c 10 § 1; 1975 1st ex.s. c 260 § 9A.32.010.]

Excusable homicide: RCW 9A.16.030.

Justifiable homicide: RCW 9A.16.040 and 9A.16.050.

9A.32.020 Premeditation—Limitations. (1) As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time.

(2) Nothing contained in this chapter shall affect RCW 46.61.520. [1975 1st ex.s. c 260 § 9A.32.020.]

9A.32.030 Murder in the first degree. (1) A person is guilty of murder in the first degree when:

(a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person; or

(b) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or

(c) He or she commits or attempts to commit the crime of either (1) robbery in the first or second degree, (2) rape in the first or second degree, (3) burglary in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants: Except that in any prosecution under this subdivision (1)(c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the first degree is a class A felony. [1990 c 200 § 1; 1975-'76 2nd ex.s. c 38 § 3; 1975 1st ex.s. c 260 § 9A.32.030.]

Additional notes found at www.leg.wa.gov

9A.32.040 Murder in the first degree—Sentence. Notwithstanding RCW 9A.32.030(2), any person convicted of the crime of murder in the first degree shall be sentenced to life imprisonment. [1982 c 10 § 2. Prior: (1) 1981 c 138 § 21; 1977 ex.s. c 206 § 3; 1975 1st ex.s. c 260 § 9A.32.040. (2) 1981 c 136 § 55 repealed by 1982 c 10 § 18.]

Capital punishment—Aggravated first degree murder: Chapter 10.95 RCW.

Additional notes found at www.leg.wa.gov

9A.32.050 Murder in the second degree. (1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony. [2003 c 3 § 2; 1975-'76 2nd ex.s. c 38 § 4; 1975 1st ex.s. c 260 § 9A.32.050.]

Findings—Intent—2003 c 3: "The legislature finds that the 1975 legislature clearly and unambiguously stated that any felony, including assault, can be a predicate offense for felony murder. The intent was evident: Punish, under the applicable murder statutes, those who commit a homicide in the course and in furtherance of a felony. This legislature reaffirms that original intent and further intends to honor and reinforce the court's decisions

over the past twenty-eight years interpreting "in furtherance of" as requiring the death to be sufficiently close in time and proximity to the predicate felony. The legislature does not agree with or accept the court's findings of legislative intent in *State v. Address*, Docket No. 71170-4 (October 24, 2002), and reasserts that assault has always been and still remains a predicate offense for felony murder in the second degree.

To prevent a miscarriage of the legislature's original intent, the legislature finds in light of *State v. Address*, Docket No. 71170-4 (October 24, 2002), that it is necessary to amend RCW 9A.32.050. This amendment is intended to be curative in nature. The legislature urges the supreme court to apply this interpretation retroactively to July 1, 1976." [2003 c 3 § 1.]

Effective date—2003 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 12, 2003]." [2003 c 3 § 3.]

Additional notes found at www.leg.wa.gov

9A.32.055 Homicide by abuse. (1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony. [1987 c 187 § 1.]

9A.32.060 Manslaughter in the first degree. (1) A person is guilty of manslaughter in the first degree when:

(a) He or she recklessly causes the death of another person; or

(b) He or she intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a class A felony. [2011 c 336 § 357; 1997 c 365 § 5; 1975 1st ex.s. c 260 § 9A.32.060.]

9A.32.070 Manslaughter in the second degree. (1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.

(2) Manslaughter in the second degree is a class B felony. [2011 c 336 § 358; 1997 c 365 § 6; 1975 1st ex.s. c 260 § 9A.32.070.]

Chapter 9A.36 RCW ASSAULT—PHYSICAL HARM

Sections

9A.36.011	Assault in the first degree.
9A.36.021	Assault in the second degree.
9A.36.031	Assault in the third degree.
9A.36.041	Assault in the fourth degree.
9A.36.045	Drive-by shooting.
9A.36.050	Reckless endangerment.
9A.36.060	Promoting a suicide attempt.
9A.36.070	Coercion.
9A.36.078	Malicious harassment—Finding.
9A.36.080	Malicious harassment—Definition and criminal penalty.
9A.36.083	Malicious harassment—Civil action.

- 9A.36.090 Threats against governor or family.
- 9A.36.100 Custodial assault.
- 9A.36.120 Assault of a child in the first degree.
- 9A.36.130 Assault of a child in the second degree.
- 9A.36.140 Assault of a child in the third degree.
- 9A.36.150 Interfering with the reporting of domestic violence.
- 9A.36.160 Failing to summon assistance.
- 9A.36.161 Failing to summon assistance—Penalty.

9A.36.011 Assault in the first degree. (1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or

(b) Administers, exposes, or transmits to or causes to be taken by another, poison, the human immunodeficiency virus as defined in chapter 70.24 RCW, or any other destructive or noxious substance; or

(c) Assaults another and inflicts great bodily harm.

(2) Assault in the first degree is a class A felony. [1997 c 196 § 1; 1986 c 257 § 4.]

Additional notes found at www.leg.wa.gov

9A.36.021 Assault in the second degree. (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2011 c 166 § 1; 2007 c 79 § 2; 2003 c 53 § 64; 2001 2nd sp.s. c 12 § 355; 1997 c 196 § 2. Prior: 1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.]

Finding—2007 c 79: "The legislature finds that assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence related assaults and fatalities. While not limited to acts of assault against an intimate partner, assault by strangulation is often knowingly inflicted upon an intimate partner with the intent to commit physical injury, or substantial or great bodily harm. Strangulation is one of the most lethal forms of domestic violence. The particular cruelty of this offense and its potential effects upon a victim both physically and psychologically, merit its categorization as a ranked felony offense under chapter 9A.36 RCW." [2007 c 79 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

(2012 Ed.)

Additional notes found at www.leg.wa.gov

9A.36.031 Assault in the third degree. (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

(2) Assault in the third degree is a class C felony. [2011 c 336 § 359; 2011 c 238 § 1; 2005 c 458 § 1; 1999 c 328 § 1; 1998 c 94 § 1; 1997 c 172 § 1; 1996 c 266 § 1; 1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

Reviser's note: This section was amended by 2011 c 238 § 1 and by 2011 c 336 § 359, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

9A.36.041 Assault in the fourth degree. (1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor. [1987 c 188 § 2; 1986 c 257 § 7.]

Additional notes found at www.leg.wa.gov

9A.36.045 Drive-by shooting. (1) A person is guilty of drive-by shooting when he or she recklessly discharges a firearm as defined in RCW 9.41.010 in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Drive-by shooting is a class B felony. [1997 c 338 § 44; 1995 c 129 § 8 (Initiative Measure No. 159); (1994 sp.s. c 7 § 511 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1989 c 271 § 109.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Additional notes found at www.leg.wa.gov

9A.36.050 Reckless endangerment. (1) A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a gross misdemeanor. [1997 c 338 § 45; 1989 c 271 § 110; 1975 1st ex.s. c 260 § 9A.36.050.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—1989 c 271 §§ 102, 109, and 110: "The legislature finds that increased trafficking in illegal drugs has increased the likelihood of "drive-by shootings." It is the intent of the legislature in sections 102, 109, and 110 of this act to categorize such reckless and criminal activity into a separate crime and to provide for an appropriate punishment." [1989 c 271 § 108.]

Criminal history and driving record: RCW 46.61.513.

Additional notes found at www.leg.wa.gov

9A.36.060 Promoting a suicide attempt. (1) A person is guilty of promoting a suicide attempt when he or she knowingly causes or aids another person to attempt suicide.

(2) Promoting a suicide attempt is a class C felony. [2011 c 336 § 360; 1975 1st ex.s. c 260 § 9A.36.060.]

[Title 9A RCW—page 14]

9A.36.070 Coercion. (1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in *RCW 9A.04.110(27) (a), (b), or (c).

(3) Coercion is a gross misdemeanor. [2011 c 336 § 361; 1975 1st ex.s. c 260 § 9A.36.070.]

***Reviser's note:** RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

9A.36.078 Malicious harassment—Finding. The legislature finds that crimes and threats against persons because of their race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicaps are serious and increasing. The legislature also finds that crimes and threats are often directed against interracial couples and their children or couples of mixed religions, colors, ancestries, or national origins because of bias and bigotry against the race, color, religion, ancestry, or national origin of one person in the couple or family. The legislature finds that the state interest in preventing crimes and threats motivated by bigotry and bias goes beyond the state interest in preventing other felonies or misdemeanors such as criminal trespass, malicious mischief, assault, or other crimes that are not motivated by hatred, bigotry, and bias, and that prosecution of those other crimes inadequately protects citizens from crimes and threats motivated by bigotry and bias. Therefore, the legislature finds that protection of those citizens from threats of harm due to bias and bigotry is a compelling state interest.

The legislature also finds that in many cases, certain discrete words or symbols are used to threaten the victims. Those discrete words or symbols have historically or traditionally been used to connote hatred or threats towards members of the class of which the victim or a member of the victim's family or household is a member. In particular, the legislature finds that cross burnings historically and traditionally have been used to threaten, terrorize, intimidate, and harass African Americans and their families. Cross burnings often preceded lynchings, murders, burning of homes, and other acts of terror. Further, Nazi swastikas historically and traditionally have been used to threaten, terrorize, intimidate, and harass Jewish people and their families. Swastikas symbolize the massive destruction of the Jewish population, commonly known as the holocaust. Therefore, the legislature finds that any person who burns or attempts to burn a cross or displays a swastika on the property of the victim or burns a cross or displays a swastika as part of a series of acts directed towards a particular person, the person's family or household members, or a particular group, knows or reasonably should know that the cross burning or swastika may create a reasonable fear of harm in the mind of the person, the person's family and household members, or the group.

The legislature also finds that a hate crime committed against a victim because of the victim's gender may be identified in the same manner that a hate crime committed against

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a victim of another protected group is identified. Affirmative indications of hatred towards gender as a class is the predominant factor to consider. Other factors to consider include the perpetrator's use of language, slurs, or symbols expressing hatred towards the victim's gender as a class; the severity of the attack including mutilation of the victim's sexual organs; a history of similar attacks against victims of the same gender by the perpetrator or a history of similar incidents in the same area; a lack of provocation; an absence of any other apparent motivation; and common sense. [1993 c 127 § 1.]

Additional notes found at www.leg.wa.gov

9A.36.080 Malicious harassment—Definition and criminal penalty. (1) A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

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(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) For the purposes of this section:

(a) "Sexual orientation" has the same meaning as in RCW 49.60.040.

(b) "Threat" means to communicate, directly or indirectly, the intent to:

(i) Cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) Cause physical damage immediately or in the future to the property of a person threatened or that of any other person.

(7) Malicious harassment is a class C felony.

(8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington. [2010 c 119 § 1; 2009 c 180 § 1; 1993 c 127 § 2; 1989 c 95 § 1; 1984 c 268 § 1; 1981 c 267 § 1.]

Harassment: Chapters 9A.46 and 10.14 RCW.

Additional notes found at www.leg.wa.gov

9A.36.083 Malicious harassment—Civil action. In addition to the criminal penalty provided in RCW 9A.36.080 for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action. [1993 c 127 § 3.]

Additional notes found at www.leg.wa.gov

9A.36.090 Threats against governor or family. (1) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the governor of the state or his or her immediate family, the governor-elect, the lieutenant governor, other officer next in the order of succession to the office of governor of the state, or the lieutenant governor-elect, or knowingly and willfully otherwise makes any such threat against the governor, governor-elect, lieutenant governor, other officer next in the order of succession to the office of governor, or lieutenant governor-elect, shall be guilty of a class C felony.

(2) As used in this section, the term "governor-elect" and "lieutenant governor-elect" means such persons as are the successful candidates for the offices of governor and lieutenant governor, respectively, as ascertained from the results of the general election. As used in this section, the phrase "other officer next in the order of succession to the office of gover-

nor" means the person other than the lieutenant governor next in order of succession to the office of governor under Article 3, section 10 of the state Constitution.

(3) The Washington state patrol may investigate for violations of this section. [2011 c 336 § 362; 1982 c 185 § 1.]

Reviser's note: 1982 c 185 § 2 directed that this section constitute a new chapter in Title 9 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 9A.36 RCW.

9A.36.100 Custodial assault. (1) A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:

(a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault;

(b) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any adult corrections institution or local adult detention facilities who was performing official duties at the time of the assault;

(c)(i) Assaults a full or part-time community correction officer while the officer is performing official duties; or

(ii) Assaults any other full or part-time employee who is employed in a community corrections office while the employee is performing official duties; or

(d) Assaults any volunteer who was assisting a person described in (c) of this subsection at the time of the assault.

(2) Custodial assault is a class C felony. [1988 c 151 § 1; 1987 c 188 § 1.]

Additional notes found at www.leg.wa.gov

9A.36.120 Assault of a child in the first degree. (1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the first degree is a class A felony. [1992 c 145 § 1.]

9A.36.130 Assault of a child in the second degree. (1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the second degree, as defined in RCW 9A.36.021, against a child; or

(b) Intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks, and the person has previously engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or

minor temporary marks, or (ii) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the second degree is a class B felony. [1992 c 145 § 2.]

9A.36.140 Assault of a child in the third degree. (1) A person eighteen years of age or older is guilty of the crime of assault of a child in the third degree if the child is under the age of thirteen and the person commits the crime of assault in the third degree as defined in RCW 9A.36.031(1) (d) or (f) against the child.

(2) Assault of a child in the third degree is a class C felony. [1992 c 145 § 3.]

9A.36.150 Interfering with the reporting of domestic violence. (1) A person commits the crime of interfering with the reporting of domestic violence if the person:

(a) Commits a crime of domestic violence, as defined in RCW 10.99.020; and

(b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

(2) Commission of a crime of domestic violence under subsection (1) of this section is a necessary element of the crime of interfering with the reporting of domestic violence.

(3) Interference with the reporting of domestic violence is a gross misdemeanor. [1996 c 248 § 3.]

9A.36.160 Failing to summon assistance. A person is guilty of the crime of failing to summon assistance if:

(1) He or she was present when a crime was committed against another person; and

(2) He or she knows that the other person has suffered substantial bodily harm as a result of the crime committed against the other person and that the other person is in need of assistance; and

(3) He or she could reasonably summon assistance for the person in need without danger to himself or herself and without interference with an important duty owed to a third party; and

(4) He or she fails to summon assistance for the person in need; and

(5) Another person is not summoning or has not summoned assistance for the person in need of such assistance. [2005 c 209 § 1.]

9A.36.161 Failing to summon assistance—Penalty. A violation of RCW 9A.36.160 is a misdemeanor. [2005 c 209 § 2.]

Chapter 9A.40 RCW

KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections

9A.40.010	Definitions.
9A.40.020	Kidnapping in the first degree.
9A.40.030	Kidnapping in the second degree.
9A.40.040	Unlawful imprisonment.
9A.40.060	Custodial interference in the first degree.
9A.40.070	Custodial interference in the second degree.

- 9A.40.080 Custodial interference—Assessment of costs—Defense—
Consent defense, restricted.
- 9A.40.090 Luring.
- 9A.40.100 Trafficking.
- 9A.40.900 Construction—Chapter applicable to state registered domestic
partnerships—2009 c 521.

9A.40.010 Definitions. The following definitions apply in this chapter:

(1) "Abduct" means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

(2) "Commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

(3) "Forced labor" means knowingly providing or obtaining labor or services of a person by: (a) Threats of serious harm to, or physical restraint against, that person or another person; or (b) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

(4) "Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or legal process. For the purposes of this subsection, "coercion" has the same meaning as provided in RCW 9A.36.070.

(5) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

(6) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm. [2011 c 336 § 363; 2011 c 111 § 2; 1975 1st ex.s. c 260 § 9A.40.010.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 111 § 2 and by 2011 c 336 § 363, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.40.020 Kidnapping in the first degree. (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:

(a) To hold him or her for ransom or reward, or as a shield or hostage; or

(b) To facilitate commission of any felony or flight thereafter; or

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- (c) To inflict bodily injury on him or her; or
- (d) To inflict extreme mental distress on him, her, or a third person; or
- (e) To interfere with the performance of any governmental function.

(2) Kidnapping in the first degree is a class A felony. [2011 c 336 § 364; 1975 1st ex.s. c 260 § 9A.40.020.]

9A.40.030 Kidnapping in the second degree. (1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3)(a) Except as provided in (b) of this subsection, kidnapping in the second degree is a class B felony.

(b) Kidnapping in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2003 c 53 § 65; 2001 2nd sp.s. c 12 § 356; 1975 1st ex.s. c 260 § 9A.40.030.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9A.40.040 Unlawful imprisonment. (1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person.

(2) Unlawful imprisonment is a class C felony. [2011 c 336 § 365; 1975 1st ex.s. c 260 § 9A.40.040.]

9A.40.060 Custodial interference in the first degree.

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian,

institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan, and:

- (a) Intends to hold the child permanently or for a protracted period; or
- (b) Exposes the child to a substantial risk of illness or physical injury; or
- (c) Causes the child to be removed from the state of usual residence.

(3) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(4) Custodial interference in the first degree is a class C felony. [1998 c 55 § 1; 1994 c 162 § 1; 1984 c 95 § 1.]

Additional notes found at www.leg.wa.gov

9A.40.070 Custodial interference in the second degree. (1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

(3) Nothing in subsection (2)(b) of this section prohibits conviction of custodial interference in the second degree under subsection (2)(a) or (c) of this section in absence of findings of contempt.

(4)(a) The first conviction of custodial interference in the second degree is a gross misdemeanor.

(b) The second or subsequent conviction of custodial interference in the second degree is a class C felony. [2003 c 53 § 66; 1989 c 318 § 2; 1984 c 95 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9A.40.080 Custodial interference—Assessment of costs—Defense—Consent defense, restricted. (1) Any reasonable expenses incurred in locating or returning a child or

incompetent person shall be assessed against a defendant convicted under RCW 9A.40.060 or 9A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that:

(a) The defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(b) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(c) The acts giving rise to the charges were consented to by the complainant; or

(d) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under RCW 9A.40.060 or 9A.40.070. [1989 c 318 § 5; 1984 c 95 § 3.]

Child custody, action by relative: RCW 26.09.255.

Additional notes found at www.leg.wa.gov

9A.40.090 Luring. (Effective until January 1, 2013.)

A person commits the crime of luring if the person:

(1)(a) Orders, lures, or attempts to lure a minor or a person with a developmental disability into any area or structure that is obscured from or inaccessible to the public or into a motor vehicle;

(b) Does not have the consent of the minor's parent or guardian or of the guardian of the person with a developmental disability; and

(c) Is unknown to the child or developmentally disabled person.

(2) It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the minor or the person with the developmental disability.

(3) For purposes of this section:

(a) "Minor" means a person under the age of sixteen;

(b) "Person with a developmental disability" means a person with a developmental disability as defined in RCW 71A.10.020.

(4) Luring is a class C felony. [1995 c 156 § 1; 1993 c 509 § 1.]

9A.40.090 Luring. (*Effective January 1, 2013.*) A person commits the crime of luring if the person:

(1)(a) Orders, lures, or attempts to lure a minor or a person with a developmental disability into any area or structure that is obscured from or inaccessible to the public, or away from any area or structure constituting a bus terminal, airport terminal, or other transportation terminal, or into a motor vehicle;

(b) Does not have the consent of the minor's parent or guardian or of the guardian of the person with a developmental disability; and

(c) Is unknown to the child or developmentally disabled person.

(2) It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the minor or the person with the developmental disability.

(3) For purposes of this section:

(a) "Minor" means a person under the age of sixteen;

(b) "Person with a developmental disability" means a person with a developmental disability as defined in RCW 71A.10.020.

(4) Luring is a class C felony. [2012 c 145 § 1; 1995 c 156 § 1; 1993 c 509 § 1.]

Effective date—2012 c 145: "This act takes effect January 1, 2013." [2012 c 145 § 2.]

9A.40.100 Trafficking. (1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835;

(C) Involve the illegal harvesting or sale of human organs; or

(D) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or

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(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

(3)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a three thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(4) For purposes of this section, "sexually explicit act" means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons. [2012 c 144 § 2; 2012 c 134 § 1; 2011 c 111 § 1; 2003 c 267 § 1.]

Reviser's note: This section was amended by 2012 c 134 § 1 and by 2012 c 144 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 23.]

Chapter 9A.42 RCW
CRIMINAL MISTREATMENT

Sections

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9A.42.110	Leaving a child in the care of a sex offender.

9A.42.005 Findings and intent—Christian Science treatment—Rules of evidence. The legislature finds that there is a significant need to protect children and dependent persons, including frail elder and vulnerable adults, from abuse and neglect by their parents, by persons entrusted with their physical custody, or by persons employed to provide them with the basic necessities of life. The legislature further finds that such abuse and neglect often takes the forms of either withholding from them the basic necessities of life, including food, water, shelter, clothing, and health care, or abandoning them, or both. Therefore, it is the intent of the legislature that criminal penalties be imposed on those guilty of such abuse or neglect. It is the intent of the legislature that a person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned. Prosecutions under this chapter shall be consistent with the rules of evidence, including hearsay, under law. [1997 c 392 § 507.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.010 Definitions. As used in this chapter:

(1) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

(2)(a) "Bodily injury" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily part or organ.

(3) "Child" means a person under eighteen years of age.

(4) "Dependent person" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life. A resident of a nursing home, as defined in RCW 18.51.010, a resident of an adult family home, as defined in RCW 70.128.010, and a frail elder or vulnerable adult, as defined in *RCW 74.34.020(13), is presumed to be a dependent person for purposes of this chapter.

(5) "Employed" means hired by a dependent person, another person acting on behalf of a dependent person, or by an organization or governmental entity, to provide to a dependent person any of the basic necessities of life. A person may be "employed" regardless of whether the person is paid for the services or, if paid, regardless of who pays for the person's services.

(6) "Parent" has its ordinary meaning and also includes a guardian and the authorized agent of a parent or guardian.

(7) "Abandons" means leaving a child or other dependent person without the means or ability to obtain one or more of the basic necessities of life.

(8) "Good samaritan" means any individual or group of individuals who: (a) Is not related to the dependent person; (b) voluntarily provides assistance or services of any type to the dependent person; (c) is not paid, given gifts, or made a beneficiary of any assets valued at five hundred dollars or more, for any reason, by the dependent person, the dependent person's family, or the dependent person's estate; and (d) does not commit or attempt to commit any other crime against the dependent person or the dependent person's estate. [2006 c 228 § 1; 1997 c 392 § 508; 1996 c 302 § 1; 1986 c 250 § 1.]

***Reviser's note:** RCW 74.34.020 was amended by 2007 c 312 § 1, changing subsection (13) to subsection (15). RCW 74.34.020 was subsequently amended by 2010 c 133 § 2, changing subsection (15) to subsection (16). RCW 74.34.020 was subsequently amended by 2011 c 89 § 18, changing subsection (16) to subsection (17), effective January 1, 2012.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

9A.42.020 Criminal mistreatment in the first degree.

(1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the first degree if he or she recklessly, as defined in RCW 9A.08.010, causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the first degree is a class B felony. [2006 c 228 § 2; 1997 c 392 § 510; 1986 c 250 § 2.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.030 Criminal mistreatment in the second degree.

(1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to

provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the second degree if he or she recklessly, as defined in RCW 9A.08.010, either (a) creates an imminent and substantial risk of death or great bodily harm, or (b) causes substantial bodily harm by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the second degree is a class C felony. [2006 c 228 § 3; 1997 c 392 § 511; 1986 c 250 § 3.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.035 Criminal mistreatment in the third degree. (1) A person is guilty of the crime of criminal mistreatment in the third degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good samaritan as defined in RCW 9A.42.010.

(3) Criminal mistreatment in the third degree is a gross misdemeanor. [2006 c 228 § 4; 2000 c 76 § 1.]

9A.42.037 Criminal mistreatment in the fourth degree. (1) A person is guilty of the crime of criminal mistreatment in the fourth degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good samaritan as defined in RCW 9A.42.010.

(2012 Ed.)

(3) Criminal mistreatment in the fourth degree is a misdemeanor. [2006 c 228 § 5; 2002 c 219 § 2.]

Intent—Finding—2002 c 219: "The legislature recognizes that responses by the department of social and health services and public safety agencies have varied between jurisdictions when allegations of withholding of the basic necessities of life are made. The legislature intends to improve the capacity of the department of social and health services and public safety agencies to respond to situations where the basic necessities of life are withheld by allowing an earlier intervention in such cases. The legislature finds that improved coordination between the department of social and health services and public safety agencies at an earlier point will lead to better treatment of children and families and will reduce the likelihood of serious harm." [2002 c 219 § 1.]

9A.42.039 Arresting officer, notification by. (1) When a law enforcement officer arrests a person for criminal mistreatment of a child, the officer must notify child protective services.

(2) When a law enforcement officer arrests a person for criminal mistreatment of a dependent person other than a child, the officer must notify adult protective services. [2002 c 219 § 5.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

9A.42.040 Withdrawal of life support systems. RCW 9A.42.020, 9A.42.030, 9A.42.035, and 9A.42.037 do not apply to decisions to withdraw life support systems made in accordance with chapter 7.70 or 70.122 RCW by the dependent person, his or her legal surrogate, or others with a legal duty to care for the dependent person. [2002 c 219 § 3; 2000 c 76 § 2; 1986 c 250 § 4.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

9A.42.045 Palliative care. RCW 9A.42.020, 9A.42.030, 9A.42.035, and 9A.42.037 do not apply when a terminally ill or permanently unconscious person or his or her legal surrogate, as set forth in chapter 7.70 RCW, requests, and the person receives, palliative care from a licensed home health agency, hospice agency, nursing home, or hospital providing care under the medical direction of a physician. As used in this section, the terms "terminally ill" and "permanently unconscious" have the same meaning as "terminal condition" and "permanent unconscious condition" in chapter 70.122 RCW. [2002 c 219 § 4; 2000 c 76 § 3; 1997 c 392 § 512.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.050 Defense of financial inability. In any prosecution for criminal mistreatment, it shall be a defense that the withholding of the basic necessities of life is due to financial inability only if the person charged has made a reasonable effort to obtain adequate assistance. This defense is available to a person employed to provide the basic necessities of life only when the agreed-upon payment has not been made. [1997 c 392 § 509; 1986 c 250 § 5.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.060 Abandonment of a dependent person in the first degree—Exception. (1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the first degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or other dependent person any of the basic necessities of life;

(b) The person recklessly abandons the child or other dependent person; and

(c) As a result of being abandoned, the child or other dependent person suffers great bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the first degree is a class B felony. [2006 c 228 § 6; 2002 c 331 § 3; 1996 c 302 § 2.]

Intent—Effective date—2002 c 331: See notes following RCW 13.34.360.

Additional notes found at www.leg.wa.gov

9A.42.070 Abandonment of a dependent person in the second degree—Exception. (1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the second degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or other dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers substantial bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other dependent person will die or suffer great bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the second degree is a class C felony. [2006 c 228 § 7; 2002 c 331 § 4; 1996 c 302 § 3.]

Intent—Effective date—2002 c 331: See notes following RCW 13.34.360.

Additional notes found at www.leg.wa.gov

9A.42.080 Abandonment of a dependent person in the third degree—Exception. (1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the third degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide

to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other person will suffer substantial bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the third degree is a gross misdemeanor. [2006 c 228 § 8; 2002 c 331 § 5; 1996 c 302 § 4.]

Intent—Effective date—2002 c 331: See notes following RCW 13.34.360.

Additional notes found at www.leg.wa.gov

9A.42.090 Abandonment of a dependent person—Defense. It is an affirmative defense to the charge of abandonment of a dependent person, that the person employed to provide any of the basic necessities of life to the child or other dependent person, gave reasonable notice of termination of services and the services were not terminated until after the termination date specified in the notice. The notice must be given to the child or dependent person, and to other persons or organizations that have requested notice of termination of services furnished to the child or other dependent person.

The department of social and health services and the department of health shall adopt rules establishing procedures for termination of services to children and other dependent persons. [1996 c 302 § 5.]

Additional notes found at www.leg.wa.gov

9A.42.100 Endangerment with a controlled substance. A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, that are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers. Endangerment with a controlled substance is a class B felony. [2005 c 218 § 4; 2002 c 229 § 1.]

Effective date—2002 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 229 § 4.]

9A.42.110 Leaving a child in the care of a sex offender. (1) A person is guilty of the crime of leaving a child in the care of a sex offender if the person is (a) the parent of a child; (b) entrusted with the physical custody of a child; or (c) employed to provide to the child the basic necessities of life, and leaves the child in the care or custody of another person who is not a parent, guardian, or lawful custodian of the child, knowing that the person is registered or

required to register as a sex offender under the laws of this state, or a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child.

(2) It is an affirmative defense to the charge of leaving a child in the care of a sex offender under this section, that the defendant must prove by a preponderance of the evidence, that a court has entered an order allowing the offender to have unsupervised contact with children, or that the offender is allowed to have unsupervised contact with the child in question under a family reunification plan, which has been approved by a court, the department of corrections, or the department of social and health services in accordance with department policies.

(3) Leaving a child in the care of a sex offender is a misdemeanor. [2002 c 170 § 1.]

Chapter 9A.44 RCW SEX OFFENSES

Sections

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9A.44.045	First degree rape—Penalties.
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9A.44.900	Decodifications and additions to this chapter.
9A.44.901	Construction—Sections decodified and added to this chapter.
9A.44.902	Effective date—1979 ex.s. c 244.
9A.44.903	Section captions—1988 c 145.
9A.44.904	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Council for children and families: Chapter 43.121 RCW.

Witnesses: Rules of court: ER 601 through 615.

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9A.44.010 Definitions. As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors; or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means

a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW. [2007 c 20 § 3; 2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

Effective date—2007 c 20: See note following RCW 9A.44.050.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Intent—1994 c 271: "The legislature hereby reaffirms its desire to protect the children of Washington from sexual abuse and further reaffirms its condemnation of child sexual abuse that takes the form of causing one child to engage in sexual contact with another child for the sexual gratification of the one causing such activities to take place." [1994 c 271 § 301.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.44.020 Testimony—Evidence—Written motion—Admissibility. (1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or

sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(3) In any prosecution for the crime of rape or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent only pursuant to the following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence. [1975 1st ex.s. c 14 § 2. Formerly RCW 9.79.150.]

9A.44.030 Defenses to prosecution under this chapter. (1) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's

age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (3) of this section based upon declarations as to age by the alleged victim.

(3) The defense afforded by subsection (2) of this section requires that for the following defendants, the reasonable belief be as indicated:

(a) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;

(b) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(c) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;

(d) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;

(e) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;

(f) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(g) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;

(h) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant. [1988 c 145 § 20; 1975 1st ex.s. c 14 § 3. Formerly RCW 9.79.160.]

Additional notes found at www.leg.wa.gov

9A.44.040 Rape in the first degree. (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

(a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or

(b) Kidnaps the victim; or

(c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or

(d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a class A felony. [1998 c 242 § 1. Prior: 1983 c 118 § 1; 1983 c 73 § 1; 1982 c 192 § 11; 1982 c 10 § 3; prior: (1) 1981 c 137 § 36; 1979 ex.s. c 244 § 1; 1975 1st ex.s. c 247 § 1; 1975 1st ex.s. c 14 § 4. (2) 1981 c 136 § 57 repealed by 1982 c 10 § 18. Formerly RCW 9.79.170.]

Additional notes found at www.leg.wa.gov

9A.44.045 First degree rape—Penalties. No person convicted of rape in the first degree shall be granted a

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deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility: PROVIDED, That every person convicted of rape in the first degree shall be confined for a minimum of three years: PROVIDED FURTHER, That the *board of prison terms and paroles shall have authority to set a period of confinement greater than three years but shall never reduce the minimum three-year period of confinement; nor shall the board release the convicted person during the first three years of confinement as a result of any type of good time calculation; nor shall the department of corrections permit the convicted person to participate in any work release program or furlough program during the first three years of confinement. This section applies only to offenses committed prior to July 1, 1984. [1982 c 192 § 12.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9A.44.050 Rape in the second degree. (1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Rape in the second degree is a class A felony. [2007 c 20 § 1; 1997 c 392 § 514; 1993 c 477 § 2; 1990 c 3 § 901; 1988 c 146 § 1; 1983 c 118 § 2; 1979 ex.s. c 244 § 2; 1975 1st ex.s. c 14 § 5. Formerly RCW 9.79.180.]

Effective date—2007 c 20: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 10, 2007]." [2007 c 20 § 4.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

9A.44.060 Rape in the third degree. (1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent as defined in RCW 9A.44.010(7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony. [1999 c 143 § 34; 1979 ex.s. c 244 § 3; 1975 1st ex.s. c 14 § 6. Formerly RCW 9.79.190.]

9A.44.073 Rape of a child in the first degree. (1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony. [1988 c 145 § 2.]

Additional notes found at www.leg.wa.gov

9A.44.076 Rape of a child in the second degree. (1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a class A felony. [1990 c 3 § 903; 1988 c 145 § 3.]

Additional notes found at www.leg.wa.gov

9A.44.079 Rape of a child in the third degree. (1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a class C felony. [1988 c 145 § 4.]

Additional notes found at www.leg.wa.gov

9A.44.083 Child molestation in the first degree. (1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony. [1994 c 271 § 303; 1990 c 3 § 902; 1988 c 145 § 5.]

Intent—1994 c 271: See note following RCW 9A.44.010.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.44.086 Child molestation in the second degree.

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony. [1994 c 271 § 304; 1988 c 145 § 6.]

Intent—1994 c 271: See note following RCW 9A.44.010.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.44.089 Child molestation in the third degree. (1)

A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a class C felony. [1994 c 271 § 305; 1988 c 145 § 7.]

Intent—1994 c 271: See note following RCW 9A.44.010.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.44.093 Sexual misconduct with a minor in the first degree. (1) A person is guilty of sexual misconduct with a minor in the first degree when:

(a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who

receives home-based instruction under chapter 28A.200 RCW.

(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school. [2009 c 324 § 1; 2005 c 262 § 2; 2001 2nd sp.s. c 12 § 357; 1994 c 271 § 306; 1988 c 145 § 8.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Intent—1994 c 271: See note following RCW 9A.44.010.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.44.096 Sexual misconduct with a minor in the second degree. (1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school. [2009 c 324 § 2; 2005 c 262 § 3; 2001 2nd sp.s. c 12 § 358; 1994 c 271 § 307; 1988 c 145 § 9.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Intent—1994 c 271: See note following RCW 9A.44.010.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

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9A.44.100 Indecent liberties. (1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.

(b) Indecent liberties by forcible compulsion is a class A felony. [2007 c 20 § 2; 2003 c 53 § 67; 2001 2nd sp.s. c 12 § 359; 1997 c 392 § 515; 1993 c 477 § 3; 1988 c 146 § 2; 1988 c 145 § 10; 1986 c 131 § 1; 1975 1st ex.s. c 260 § 9A.88.100. Formerly RCW 9A.88.100.]

Effective date—2007 c 20: See note following RCW 9A.44.050.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

9A.44.105 Sexually violating human remains. (1) Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.

(2) As used in this section:

(a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under chapter 68.50 RCW or other law; and (iii) also means any act of sexual contact between

the sex organs of a person and the mouth or anus of a dead human body.

(b) "Sexual contact" means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of gratifying the sexual desire of the person. [1994 c 53 § 1.]

9A.44.115 Voyeurism. (1) As used in this section:

(a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;

(b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;

(c) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

(a) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(3) Voyeurism is a class C felony.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

(5) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section. [2003 c 213 § 1; 1998 c 221 § 1.]

Effective date—2003 c 213: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 213 § 2.]

9A.44.120 Admissibility of child's statement—Conditions. A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual

contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm as defined by RCW 9A.04.110, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement. [1995 c 76 § 1; 1991 c 169 § 1; 1985 c 404 § 1; 1982 c 129 § 2.]

Additional notes found at www.leg.wa.gov

9A.44.128 Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330. For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW *43.43.830(5) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.

(4) "Employed" or "carries on a vocation" means employment that is full time or part time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to pro-

vide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent;

(b) Any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection.

(9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

(a) Any offense defined as a sex offense by RCW 9.94A.030;

(b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(c) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(d) A violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses;

(e) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection;

(f) Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;

(g) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);

(h) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States secretary of defense;

(i) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

(2012 Ed.)

(11) "School" means a public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any school or institution of higher education. [2012 c 134 § 2; 2011 c 337 § 2; 2010 c 267 § 1.]

*Reviser's note: RCW 43.43.830 was alphabetized in 2011 pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (6). RCW 43.43.830 was subsequently amended by 2012 c 44 § 1, changing subsection (6) to subsection (7).

Application—2010 c 267: "The provisions of this act apply to persons convicted before, on, or after June 10, 2010." [2010 c 267 § 15.]

9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. When a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection must give notice to the county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

(2)(a) A person required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

(b) A person may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the county sheriff or as part of any notice required by this section.

(c) A photograph or copy of an individual's fingerprints may be taken at any time to update an individual's file.

(3)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) **OFFENDERS IN CUSTODY.** (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a

result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) **OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within three business days from the time of release with the county sheriff for the county of

the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register within three business days of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within three business days of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after

February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within three business days of receiving notice of this registration requirement.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than three business days after entering the county and provide the information required in subsection (2)(a) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of RCW 9A.44.132, or arraignment on charges for a violation of RCW 9A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under RCW 9A.44.132 who asserts as a defense the lack of notice of the duty to register shall register within three business days following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (3)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, the person must register with that county sheriff within three business days of moving. Within three business days, the person must also provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(5)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (2)(a) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (3)(a)(vii) or (viii) and (5) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(6) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change.

No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within three business days of the entry of the order.

(7) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section. [2011 c 337 § 3. Prior: 2010 c 267 § 2; 2010 c 265 § 1; 2008 c 230 § 1; prior: 2006 c 129 § 2; (2006 c 129 § 1 expired September 1, 2006); 2006 c 128 § 2; (2006 c 128 § 1 expired September 1, 2006); 2006 c 127 § 2; 2006 c 126 § 2; (2006 c 126 § 1 expired September 1, 2006); 2005 c 380 § 1; prior: 2003 c 215 § 1; 2003 c 53 § 68; 2002 c 31 § 1; prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Application—2010 c 267: See note following RCW 9A.44.128.

Delayed effective date—2008 c 230 §§ 1-3: "Sections 1 through 3 of this act take effect ninety days after adjournment sine die of the 2010 legislative session." [2008 c 230 § 5.]

Effective date—2006 c 129 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 129 § 4.]

Expiration date—2006 c 129 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 129 § 3.]

Effective date—2006 c 128 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 128 § 8.]

Expiration date—2006 c 128 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 128 § 7.]

Severability—2006 c 127: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 127 § 1.]

Effective date—2006 c 127: "This act takes effect September 1, 2006." [2006 c 127 § 3.]

Effective date—2006 c 126 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 126 § 10.]

Expiration date—2006 c 126 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 126 § 8.]

Effective date—2006 c 126 §§ 1 and 3-7: "Sections 1 and 3 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 20, 2006]." [2006 c 126 § 9.]

Effective date—2005 c 380: "This act takes effect September 1, 2006." [2005 c 380 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—2002 c 31: "This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140." [2002 c 31 § 2.]

Severability—2002 c 31: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [2002 c 31 § 3.]

Effective date—2002 c 31: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 31 § 4.]

Intent—1999 sp.s. c 6: "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of *State v. Pickett*, Docket number 41562-0-1. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

Findings—1997 c 113: See note following RCW 4.24.550.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Intent—1994 c 84: "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

Finding and intent—1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

Finding—Policy—1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Additional notes found at www.leg.wa.gov

9A.44.132 Failure to register as sex offender or kidnapping offender. (1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state on two or more prior occasions, the failure to register under this subsection is a class B felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a sex offense other than a felony and knowingly fails to comply with any of the requirements of RCW 9A.44.130. The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under RCW 9A.44.130 for a kidnapping offense and knowingly

fails to comply with any of the requirements of RCW 9A.44.130.

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a class C felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to RCW 9A.44.141 and 9A.44.142, a violation of this section is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080. [2011 c 337 § 5; 2010 c 267 § 3.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.135 Address verification. (1) When an offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall notify the police chief or town marshal of the jurisdiction in which the offender has registered to live. If the offender registers to live in an unincorporated area of the county, the sheriff shall make reasonable attempts to verify that the offender is residing at the registered address. If the offender registers to live in an incorporated city or town, the police chief or town marshal shall make reasonable attempts to verify that the offender is residing at the registered address. Reasonable attempts include verifying an offender's address pursuant to the grant program established under RCW 36.28A.230. If the sheriff or police chief or town marshal does not participate in the grant program established under RCW 36.28A.230, reasonable attempts require a yearly mailing by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address sent by the chief law enforcement officer of the jurisdiction where the offender is registered to live. For offenders who have been previously designated sexually violent predators under chapter 71.09 RCW or the equivalent procedure in another jurisdiction, even if the designation has subsequently been removed, this mailing must be sent every ninety days.

The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the chief law enforcement officer of the jurisdiction where the offender is registered to live within ten days after receipt of the form.

(2) The chief law enforcement officer of the jurisdiction where the offender has registered to live shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address.

If the offender fails to return the verification form or the offender is not at the last registered address, the chief law enforcement officer of the jurisdiction where the offender has registered to live shall promptly forward this information to the county sheriff and to the Washington state patrol for inclusion in the central registry of sex offenders.

(3) When an offender notifies the county sheriff of a change to his or her residence address pursuant to RCW 9A.44.130, and the new address is in a different law enforcement jurisdiction, the county sheriff shall notify the police chief or town marshal of the jurisdiction from which the offender has moved.

(4) County sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section. [2010 c 265 § 2; 2000 c 91 § 1; 1999 c 196 § 15; 1998 c 220 § 2; 1995 c 248 § 3.]

Additional notes found at www.leg.wa.gov

9A.44.138 Attendance, employment of registered sex offenders and kidnapping offenders at institutions of higher education—Notice to school districts, principal, department of public safety at institution—Confidentiality. (1) Upon receiving notice from a registered person pursuant to RCW 9A.44.130 that the person will be attending a school or institution of higher education or will be employed with an institution of higher education, the sheriff must promptly notify the school district and the school principal or institution's department of public safety and shall provide that school or department with the person's: (a) Name and any aliases used; (b) complete residential address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) social security number; (h) photograph; and (i) risk level classification.

(2) A principal or department receiving notice under this subsection must disclose the information received from the sheriff as follows:

(a) If the student is classified as a risk level II or III, the principal shall provide the information received to every teacher of the student and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record;

(b) If the student is classified as a risk level I, the principal or department shall provide the information received only to personnel who, in the judgment of the principal or department, for security purposes should be aware of the student's record.

(3) The sheriff shall notify the applicable school district and school principal or institution's department of public safety whenever a student's risk level classification is changed or the sheriff is notified of a change in the student's address.

(4) Any information received by school or institution personnel under this subsection is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq. [2011 c 337 § 4.]

9A.44.140 Registration of sex offenders and kidnapping offenders—Duty to register—Expiration of subsection. The duty to register under RCW 9A.44.130 shall continue for the duration provided in this section.

(1) For a person convicted in this state of a class A felony or an offense listed in RCW 9A.44.142(5), or a person convicted in this state of any sex offense or kidnapping offense who has one or more prior convictions for a sex offense or kidnapping offense, the duty to register shall continue indefinitely.

(2) For a person convicted in this state of a class B felony who does not have one or more prior convictions for a sex offense or kidnapping offense and whose current offense is

not listed in RCW 9A.44.142(5), the duty to register shall end fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(3) For a person convicted in this state of a class C felony, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a class C felony, and the person does not have one or more prior convictions for a sex offense or kidnapping offense and the person's current offense is not listed in RCW 9A.44.142(5), the duty to register shall end ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period.

(4) For a person required to register for a federal or out-of-state conviction, the duty to register shall continue indefinitely.

(5) Nothing in this section prevents a person from being relieved of the duty to register under RCW 9A.44.142 and 9A.44.143.

(6) Nothing in RCW 9.94A.637 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

(7) For purposes of determining whether a person has been convicted of more than one sex offense, failure to register as a sex offender or kidnapping offender is not a sex or kidnapping offense.

(8) The provisions of this section and RCW 9A.44.141 through 9A.44.143 apply equally to a person who has been found not guilty by reason of insanity under chapter 10.77 RCW of a sex offense or kidnapping offense. [2010 c 267 § 4; 2002 c 25 § 1; 2001 c 170 § 2; 2000 c 91 § 3; 1998 c 220 § 3; 1997 c 113 § 4; 1996 c 275 § 12. Prior: 1995 c 268 § 4; 1995 c 248 § 2; 1995 c 195 § 2; 1991 c 274 § 3; 1990 c 3 § 408.]

Application—2010 c 267: See note following RCW 9A.44.128.

Effective date—2002 c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 25 § 3.]

Intent—2001 c 170: "The legislature intends to amend the lifetime sex offender registration requirement so that it is narrowly tailored to meet the requirements of the Jacob Wetterling act." [2001 c 170 § 1.]

Findings—1997 c 113: See note following RCW 4.24.550.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Finding and intent—1991 c 274: See note following RCW 9A.44.130.

Additional notes found at www.leg.wa.gov

9A.44.141 Investigation—End of duty to register—Removal from registry—Civil liability. (1) Upon the request of a person who is listed in the Washington state patrol central registry of sex offenders and kidnapping offenders, the county sheriff shall investigate whether a per-

son's duty to register has ended by operation of law pursuant to RCW 9A.44.140.

(a) Using available records, the county sheriff shall verify that the offender has spent the requisite time in the community and has not been convicted of a disqualifying offense.

(b) If the county sheriff determines the person's duty to register has ended by operation of law, the county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(2) Nothing in this subsection prevents a county sheriff from investigating, upon his or her own initiative, whether a person's duty to register has ended by operation of law pursuant to RCW 9A.44.140.

(3)(a) A person who is listed in the central registry as the result of a federal or out-of-state conviction may request the county sheriff to investigate whether the person should be removed from the registry if:

(i) A court in the person's state of conviction has made an individualized determination that the person should not be required to register; and

(ii) The person provides proof of relief from registration to the county sheriff.

(b) If the county sheriff determines the person has been relieved of the duty to register in his or her state of conviction, the county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(4) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for removing or requesting the removal of a person from the central registry of sex offenders and kidnapping offenders or the failure to remove or request removal of a person within the time frames provided in RCW 9A.44.140. [2011 c 337 § 6; 2010 c 267 § 5.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.142 Relief from duty to register—Petition—Exceptions. (1) A person who is required to register under RCW 9A.44.130 may petition the superior court to be relieved of the duty to register:

(a) If the person has a duty to register for a sex offense or kidnapping offense committed when the offender was a juvenile, regardless of whether the conviction was in this state, as provided in RCW 9A.44.143;

(b) If the person is required to register for a conviction in this state and is not prohibited from petitioning for relief from registration under subsection (2) of this section, when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period; or

(c) If the person is required to register for a federal or out-of-state conviction, when the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(2)(a) A person may not petition for relief from registration if the person has been:

(i) Determined to be a sexually violent predator as defined in RCW 71.09.020;

(ii) Convicted as an adult of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after June 8, 2000; or

(iii) Until July 1, 2012, convicted of one aggravated offense or more than one sexually violent offense, as defined in subsection (5) of this section, and the offense or offenses were committed on or after March 12, 2002. After July 1, 2012, this subsection (2)(a)(iii) shall have no further force and effect.

(b) Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.

(3) A petition for relief from registration or exemption from notification under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in the county where the person is registered at the time the petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

(4)(a) The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination:

(i) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(ii) Any subsequent criminal history;

(iii) The petitioner's compliance with supervision requirements;

(iv) The length of time since the charged incident(s) occurred;

(v) Any input from community corrections officers, law enforcement, or treatment providers;

(vi) Participation in sex offender treatment;

(vii) Participation in other treatment and rehabilitative programs;

(viii) The offender's stability in employment and housing;

(ix) The offender's community and personal support system;

(x) Any risk assessments or evaluations prepared by a qualified professional;

(xi) Any updated polygraph examination;

(xii) Any input of the victim;

(xiii) Any other factors the court may consider relevant.

(5)(a) A person who has been convicted of an aggravated offense, or has been convicted of one or more prior sexually violent offenses or criminal offenses against a victim who is a minor, as defined in (b) of this subsection:

(i) Until July 1, 2012, may not be relieved of the duty to register;

(ii) After July 1, 2012, may petition the court to be relieved of the duty to register as provided in this section;

(iii) This provision shall apply to convictions for crimes committed on or after July 22, 2001.

(b) Unless the context clearly requires otherwise, the following definitions apply only to the federal lifetime registration requirements under this subsection:

(i) "Aggravated offense" means an adult conviction that meets the definition of 18 U.S.C. Sec. 2241, which is limited to the following:

(A) Any sex offense involving sexual intercourse or sexual contact where the victim is under twelve years of age;

(B) RCW 9A.44.040 (rape in the first degree), RCW 9A.44.073 (rape of a child in the first degree), or RCW 9A.44.083 (child molestation in the first degree);

(C) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct: RCW 9A.44.050 (rape in the second degree), RCW 9A.44.100 (indecent liberties), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), or RCW 9.68A.040 (sexual exploitation of a minor);

(D) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct, if the victim is twelve years of age or over but under sixteen years of age and the offender is eighteen years of age or over and is more than forty-eight months older than the victim: RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), or RCW 9A.44.089 (child molestation in the third degree);

(E) A felony with a finding of sexual motivation under RCW 9.94A.835 where the victim is under twelve years of age or that is committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct;

(F) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(G) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(i)(A) through (F) of this subsection.

(ii) "Sexually violent offense" means an adult conviction that meets the definition of 42 U.S.C. Sec. 14071(a)(1)(A), which is limited to the following:

(A) An aggravated offense;

(B) An offense that is not an aggravated offense but meets the definition of 18 U.S.C. Sec. 2242, which is limited to RCW 9A.44.050(1) (b) through (f) (rape in the second degree) and RCW 9A.44.100(1) (b) through (f) (indecent liberties);

(C) A felony with a finding of sexual motivation under RCW 9.94A.835 where the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the conduct;

(D) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(ii)(A) through (D) of this subsection.

(iii) "Criminal offense against a victim who is a minor" means, in addition to any aggravated offense or sexually violent offense where the victim was under eighteen years of age, an adult conviction for the following offenses where the victim is under eighteen years of age:

(A) RCW 9A.44.060 (rape in the third degree), RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), RCW 9A.44.089 (child molestation in the third degree), RCW 9A.44.093 (sexual misconduct with a minor in the first degree), RCW 9A.44.096 (sexual misconduct with a minor in the second degree), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), RCW 9.68A.040 (sexual exploitation of a minor), RCW 9.68A.090 (communication with a minor for immoral purposes), or RCW 9.68A.100 (commercial sexual abuse of a minor);

(B) RCW 9A.40.020 (kidnapping in the first degree), RCW 9A.40.030 (kidnapping in the second degree), or RCW 9A.40.040 (unlawful imprisonment), where the victim is a minor and the offender is not the minor's parent;

(C) A felony with a finding of sexual motivation under RCW 9.94A.835 where the victim is a minor;

(D) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(iii)(A) through (D) of this subsection. [2011 c 337 § 7; 2010 c 267 § 6.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.143 Relief from duty to register for sex offense or kidnapping offense committed when offender was a juvenile—Petition—Exception. (1) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty as provided in this section.

(2) For class A sex offenses or kidnapping offenses committed when the petitioner was fifteen years of age or older, the court may relieve the petitioner of the duty to register if:

(a) At least sixty months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the sixty months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to war-

rant removal from the central registry of sex offenders and kidnapping offenders.

(3) For all other sex offenses or kidnapping offenses committed by a juvenile not included in subsection (2) of this section, the court may relieve the petitioner of the duty to register if:

(a) At least twenty-four months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the twenty-four months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(4) A petition for relief from registration under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

(5) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders, the following factors are provided as guidance to assist the court in making its determination, to the extent the factors are applicable considering the age and circumstances of the petitioner:

(a) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(b) Any subsequent criminal history;

(c) The petitioner's compliance with supervision requirements;

(d) The length of time since the charged incident(s) occurred;

(e) Any input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers;

(f) Participation in sex offender treatment;

(g) Participation in other treatment and rehabilitative programs;

(h) The offender's stability in employment and housing;

(i) The offender's community and personal support system;

(j) Any risk assessments or evaluations prepared by a qualified professional;

(k) Any updated polygraph examination;

(l) Any input of the victim;

(m) Any other factors the court may consider relevant.

(6) A juvenile prosecuted and convicted of a sex offense or kidnapping offense as an adult may not petition to the superior court under this section. [2011 c 338 § 1; 2010 c 267 § 7.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.145 Notification to offenders of changed requirements and ability to petition for relief from registration. (1) The state patrol shall notify:

(a) Registered sex and kidnapping offenders of any change to the registration requirements; and

(b) No less than annually, an offender having a duty to register under RCW 9A.44.143 for a sex offense or kidnapping offense committed when the offender was a juvenile of their ability to petition for relief from registration as provided in RCW 9A.44.140.

(2) For economic efficiency, the state patrol may combine the notices in this section into one notice. [2010 c 267 § 8; 2009 c 210 § 1; 1998 c 139 § 2.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.150 Testimony of child by closed-circuit television. (1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will:

(i) Describe an act or attempted act of sexual contact performed with or on the child witness by another person or with or on a child other than the child witness by another person;

(ii) Describe an act or attempted act of physical abuse against the child witness by another person or against a child other than the child witness by another person; or

(iii) Describe a violent offense as defined by RCW 9A.030 committed against a person known by or familiar to the child witness or by a person known by or familiar to the child witness;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in subsection (1)(a) and (b) of this section, the court may allow a child witness to testify in the presence of the defendant but outside the presence of the jury, via closed-circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child witness for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to

demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child witness against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child witness from the serious emotional or mental distress;

(h) When the court allows the child witness to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child witness are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child witness or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child witness is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child witness may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child witness will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child witness by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child witness by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child witness shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor,

defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child witness to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the child witness and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child witness.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure.

(10) A child witness may or may not be a victim in the proceeding.

(11) Nothing in this section precludes the court, under other circumstances arising under subsection (1)(a) of this section, from allowing a child to testify outside the presence of the defendant and the jury so long as the testimony is presented in accordance with the standards and procedures required in this section. [2005 c 455 § 1; 1990 c 150 § 2.]

Additional notes found at www.leg.wa.gov

9A.44.160 Custodial sexual misconduct in the first degree. (1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(a) When:

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

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influ-

ence the terms, conditions, length, or fact of incarceration or correctional supervision; or

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

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

(3) Custodial sexual misconduct in the first degree is a class C felony. [1999 c 45 § 1.]

9A.44.170 Custodial sexual misconduct in the second degree. (1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

(a) When:

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

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

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

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

(3) Custodial sexual misconduct in the second degree is a gross misdemeanor. [1999 c 45 § 2.]

9A.44.180 Custodial sexual misconduct—Defense. It is an affirmative defense to prosecution under RCW 9A.44.160 or 9A.44.170, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person. [1999 c 45 § 3.]

9A.44.190 Criminal trespass against children—Definitions. As used in this section and RCW 9A.44.193 and 9A.44.196:

(1) "Covered entity" means any public facility or private facility whose primary purpose, at any time, is to provide for the education, care, or recreation of a child or children, including but not limited to community and recreational centers, playgrounds, schools, swimming pools, and state or municipal parks.

(2) "Child" means a person under the age of eighteen, unless the context clearly indicates that the term is otherwise defined in statute.

(3) "Public facility" means a facility operated by a unit of local or state government, or by a nonprofit organization.

(4) "Schools" means public and private schools, but does not include home-based instruction as defined in RCW 28A.225.010.

(5) "Covered offender" means a person required to register under RCW 9A.44.130 who is eighteen years of age or older, who is not under the jurisdiction of the juvenile rehabilitation authority or currently serving a special sex offender disposition alternative, whose risk level classification has

been assessed at a risk level II or a risk level III pursuant to RCW 72.09.345, and who, at any time, has been convicted of one or more of the following offenses:

(a) Rape of a child in the first, second, and third degree; child molestation in the first, second, and third degree; indecent liberties against a child under age fifteen; sexual misconduct with a minor in the first and second degree; incest in the first and second degree; luring with sexual motivation; possession of depictions of minors engaged in sexually explicit conduct; dealing in depictions of minors engaged in sexually explicit conduct; bringing into the state depictions of minors engaged in sexually explicit conduct; sexual exploitation of a minor; communicating with a minor for immoral purposes; *patronizing a juvenile prostitute;

(b) Any felony in effect at any time prior to March 20, 2006, that is comparable to an offense listed in (a) of this subsection, including, but not limited to, statutory rape in the first and second degrees [degree] and carnal knowledge;

(c) Any felony offense for which:

(i) There was a finding that the offense was committed with sexual motivation; and

(ii) The victim of the offense was less than sixteen years of age at the time of the offense;

(d) An attempt, conspiracy, or solicitation to commit any of the offenses listed in (a) through (c) of this subsection;

(e) Any conviction from any other jurisdiction which is comparable to any of the offenses listed in (a) through (d) of this subsection. [2006 c 126 § 4; 2006 c 125 § 2.]

***Reviser's note:** The term "patronizing a juvenile prostitute" was changed to "commercial sexual abuse of a minor" by 2007 c 368 § 2.

Effective date—2006 c 126 §§ 1 and 3-7: See note following RCW 9A.44.130.

Intent—2006 c 125: "It is the intent of the legislature to give public and private entities that provide services to children the tools necessary to prevent convicted child sex offenders from contacting children when those children are within the legal premises of the covered public and private entities." [2006 c 126 § 3; 2006 c 125 § 1.]

Severability—2006 c 125: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 125 § 6.]

Effective date—2006 c 125: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 2006]." [2006 c 125 § 7.]

9A.44.193 Criminal trespass against children—Covered entities. (1) An owner, manager, or operator of a covered entity may order a covered offender from the legal premises of a covered entity as provided under this section. To do this, the owner, manager, or operator of a covered entity must first provide the covered offender, or cause the covered offender to be provided, personal service of a written notice that informs the covered offender that:

(a) The covered offender must leave the legal premises of the covered entity and may not return without the written permission of the covered entity; and

(b) If the covered offender refuses to leave the legal premises of the covered entity, or thereafter returns and enters within the legal premises of the covered entity without written permission, the offender may be charged and prosecuted for a felony offense as provided in RCW 9A.44.196.

(2) A covered entity may give written permission of entry and use to a covered offender to enter and remain on the legal premises of the covered entity at particular times and for lawful purposes, including, but not limited to, conducting business, voting, or participating in educational or recreational activities. Any written permission of entry and use of the legal premises of a covered entity must be clearly stated in a written document and must be personally served on the covered offender. If the covered offender violates the conditions of entry and use contained in a written document personally served on the offender by the covered entity, the covered offender may be charged and prosecuted for a felony offense as provided in RCW 9A.44.196.

(3) An owner, employee, or agent of a covered entity shall be immune from civil liability for damages arising from excluding or failing to exclude a covered offender from a covered entity or from imposing or failing to impose conditions of entry and use on a covered offender.

(4) A person provided with written notice from a covered entity under this section may file a petition with the district court alleging that he or she does not meet the definition of "covered offender" in RCW 9A.44.190. The district court must conduct a hearing on the petition within thirty days of the petition being filed. In the hearing on the petition, the person has the burden of proving that he or she is not a covered offender. If the court finds, by a preponderance of the evidence, that the person is not a covered offender, the court shall order the covered entity to rescind the written notice and shall order the covered entity to pay the person's costs and reasonable attorneys' fees. [2006 c 126 § 5; 2006 c 125 § 3.]

Effective date—2006 c 126 §§ 1 and 3-7: See note following RCW 9A.44.130.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

9A.44.196 Criminal trespass against children. (1) A person is guilty of the crime of criminal trespass against children if he or she:

(a) Is a covered offender as defined in RCW 9A.44.190; and

(b)(i) Is personally served with written notice complying with the requirements of RCW 9A.44.193 that excludes the covered offender from the legal premises of the covered entity and remains upon or reenters the legal premises of the covered entity; or

(ii) Is personally served with written notice complying with the requirements of RCW 9A.44.193 that imposes conditions of entry and use on the covered offender and violates the conditions of entry and use.

(2) Criminal trespass against children is a class C felony. [2006 c 126 § 6; 2006 c 125 § 4.]

Effective date—2006 c 126 §§ 1 and 3-7: See note following RCW 9A.44.130.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

9A.44.900 Decodifications and additions to this chapter. RCW 9.79.140, 9.79.150, 9.79.160, 9.79.170 as now or hereafter amended, 9.79.180 as now or hereafter amended, 9.79.190 as now or hereafter amended, 9.79.200 as now or hereafter amended, 9.79.210 as now or hereafter amended,

9.79.220 as now or hereafter amended, 9A.88.020, and 9A.88.100 are each decodified and are each added to Title 9A RCW as a new chapter with the designation chapter 9A.44 RCW. [1979 ex.s. c 244 § 17.]

9A.44.901 Construction—Sections decodified and added to this chapter. The sections decodified by RCW 9A.44.900 and added to Title 9A RCW as a new chapter with the designation chapter 9A.44 RCW shall be construed as part of Title 9A RCW. [1979 ex.s. c 244 § 18.]

9A.44.902 Effective date—1979 ex.s. c 244. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979. [1979 ex.s. c 244 § 19.]

9A.44.903 Section captions—1988 c 145. Section captions as used in this chapter do not constitute any part of the law. [1988 c 145 § 22.]

Additional notes found at www.leg.wa.gov

9A.44.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 24.]

Chapter 9A.46 RCW HARASSMENT

Sections

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9A.46.900	Short title.
9A.46.905	Effective date—1985 c 288.
9A.46.910	Severability—1985 c 288.

Disclosure of information to person threatened or harassed by individual with mental illness: RCW 71.05.390.

Harassment: RCW 9A.36.080, chapter 10.14 RCW.

9A.46.010 Legislative finding. The legislature finds that the prevention of serious, personal harassment is an

important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

The legislature further finds that the protection of such persons from harassment can be accomplished without infringing on constitutionally protected speech or activity. [1985 c 288 § 1.]

9A.46.020 Definition—Penalties. (1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if any of the following apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat.

(3) Any criminal justice participant who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with him or her, shall be eligible for the address confidentiality program created under RCW 40.24.030.

(4) For purposes of this section, a criminal justice participant includes any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or

local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.

(5) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law. [2011 c 64 § 1; 2003 c 53 § 69; 1999 c 27 § 2; 1997 c 105 § 1; 1992 c 186 § 2; 1985 c 288 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—1999 c 27: "It is the intent of chapter 27, Laws of 1999 to clarify that electronic communications are included in the types of conduct and actions that can constitute the crimes of harassment and stalking. It is not the intent of the legislature, by adoption of chapter 27, Laws of 1999, to restrict in any way the types of conduct or actions that can constitute harassment or stalking." [1999 c 27 § 1.]

Additional notes found at www.leg.wa.gov

9A.46.030 Place where committed. Any harassment offense committed as set forth in RCW 9A.46.020 or 9A.46.110 may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received. [1992 c 186 § 3; 1985 c 288 § 3.]

Additional notes found at www.leg.wa.gov

9A.46.040 Court-ordered requirements upon person charged with crime—Violation. (1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court. [2012 c 223 § 1; 2011 c 307 § 4; 1985 c 288 § 4.]

9A.46.050 Arraignment—No-contact order. A defendant who is charged by citation, complaint, or information with an offense involving harassment and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information. At that appearance, the court shall determine the necessity of imposing a no-contact or no-harassment order, and consider the provisions of RCW 9A.1.800, or other conditions of pre-

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trial release according to the procedures established by court rule for preliminary appearance or an arraignment. [1994 sp.s. c 7 § 447; 1985 c 288 § 5.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9A.46.060 Crimes included in harassment. As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);
- (17) Malicious mischief in the first degree (RCW 9A.48.070);
- (18) Malicious mischief in the second degree (RCW 9A.48.080);
- (19) Malicious mischief in the third degree (RCW 9A.48.090);
- (20) Kidnapping in the first degree (RCW 9A.40.020);
- (21) Kidnapping in the second degree (RCW 9A.40.030);
- (22) Unlawful imprisonment (RCW 9A.40.040);
- (23) Rape in the first degree (RCW 9A.44.040);
- (24) Rape in the second degree (RCW 9A.44.050);
- (25) Rape in the third degree (RCW 9A.44.060);
- (26) Indecent liberties (RCW 9A.44.100);
- (27) Rape of a child in the first degree (RCW 9A.44.073);
- (28) Rape of a child in the second degree (RCW 9A.44.076);
- (29) Rape of a child in the third degree (RCW 9A.44.079);
- (30) Child molestation in the first degree (RCW 9A.44.083);
- (31) Child molestation in the second degree (RCW 9A.44.086);
- (32) Child molestation in the third degree (RCW 9A.44.089);
- (33) Stalking (RCW 9A.46.110);
- (34) Cyberstalking (RCW 9.61.260);
- (35) Residential burglary (RCW 9A.52.025);

(36) Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW;

(37) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and

(38) Unlawful discharge of a laser in the second degree (RCW 9A.49.030). [2006 c 138 § 21; 2004 c 94 § 4; 1999 c 180 § 7; 1997 c 338 § 52. Prior: 1994 c 271 § 802; 1994 c 121 § 2; prior: 1992 c 186 § 4; 1992 c 145 § 12; 1988 c 145 § 15; 1985 c 288 § 6.]

Short title—2006 c 138: See RCW 7.90.900.

Severability—Effective dates—2004 c 94: See notes following RCW 9.61.260.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.46.070 Enforcement of orders restricting contact.

Any law enforcement agency in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim or others. [1985 c 288 § 7.]

9A.46.080 Order restricting contact—Violation. The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest. [2012 c 223 § 2; 2011 c 307 § 5; 1985 c 288 § 8.]

9A.46.090 Nonliability of peace officer. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of harassment brought by any party to the incident. [1985 c 288 § 9.]

9A.46.100 "Convicted," time when. As used in RCW 9.61.230, 9.61.260, 9A.46.020, or 9A.46.110, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, posttrial motions, and appeals. [2004 c 94 § 5; 1992 c 186 § 5; 1985 c 288 § 10.]

Severability—Effective dates—2004 c 94: See notes following RCW 9.61.260.

Additional notes found at www.leg.wa.gov

9A.46.110 Stalking. (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.

(b) A person who stalks another is guilty of a class C felony if any of the following applies: (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (ii) the stalking violates any protective order protecting the person being stalked; (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (iv) the stalker was armed with a deadly weapon, as defined in *RCW 9.94A.602, while stalking the person; (v)(A) the stalker's victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections' officer; an employee, contract staff person, or volunteer of a correctional agency; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and (B) the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate

against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Correctional agency" means a person working for the department of natural resources in a correctional setting or any state, county, or municipally operated agency with the authority to direct the release of a person serving a sentence or term of confinement and includes but is not limited to the department of corrections, the indeterminate sentence review board, and the department of social and health services.

(b) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(c) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(d) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(e) "Repeatedly" means on two or more separate occasions. [2007 c 201 § 1; 2006 c 95 § 3; 2003 c 53 § 70. Prior: 1999 c 143 § 35; 1999 c 27 § 3; 1994 c 271 § 801; 1992 c 186 § 1.]

*Reviser's note: RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Findings—Intent—2006 c 95: See note following RCW 74.04.790.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—1999 c 27: See note following RCW 9A.46.020.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.46.120 Criminal gang intimidation. A person commits the offense of criminal gang intimidation if the person threatens another person with bodily injury because the other person refuses to join or has attempted to withdraw from a gang, as defined in RCW 28A.600.455, if the person who threatens the victim or the victim attends or is registered in a public or alternative school. Criminal gang intimidation is a class C felony. [1997 c 266 § 3.]

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

9A.46.900 Short title. This act shall be known as the anti-harassment act of 1985. [1985 c 288 § 12.]

9A.46.905 Effective date—1985 c 288. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1985. [1985 c 288 § 15.]

9A.46.910 Severability—1985 c 288. If any provision of this act or its application to any person or circumstance is (2012 Ed.)

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 288 § 14.]

Chapter 9A.48 RCW

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.010	Definitions.
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9A.48.030	Arson in the second degree.
9A.48.040	Reckless burning in the first degree.
9A.48.050	Reckless burning in the second degree.
9A.48.060	Reckless burning—Defense.
9A.48.070	Malicious mischief in the first degree.
9A.48.080	Malicious mischief in the second degree.
9A.48.090	Malicious mischief in the third degree.
9A.48.100	Malicious mischief—"Physical damage" defined.
9A.48.105	Criminal street gang tagging and graffiti.
9A.48.110	Defacing a state monument.
9A.48.120	Civil disorder training.

Explosives: Chapter 70.74 RCW.

9A.48.010 Definitions. (1) For the purpose of this chapter, unless the context indicates otherwise:

(a) "Building" has the definition in RCW 9A.04.110(5), and where a building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;

(b) "Damages", in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act;

(c) "Property of another" means property in which the actor possesses anything less than exclusive ownership.

(2) To constitute arson it is not necessary that a person other than the actor has ownership in the building or structure damaged or set on fire. [2002 c 32 § 1; 1975-'76 2nd ex.s. c 38 § 6; 1975 1st ex.s. c 260 § 9A.48.010.]

Effective date—2002 c 32: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 32 § 2.]

Additional notes found at www.leg.wa.gov

9A.48.020 Arson in the first degree. (1) A person is guilty of arson in the first degree if he or she knowingly and maliciously:

(a) Causes a fire or explosion which is manifestly dangerous to any human life, including firefighters; or

(b) Causes a fire or explosion which damages a dwelling; or

(c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or

(d) Causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds.

(2) Arson in the first degree is a class A felony. [2007 c 218 § 63; 1981 c 203 § 2; 1975 1st ex.s. c 260 § 9A.48.020.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

9A.48.030 Arson in the second degree. (1) A person is guilty of arson in the second degree if he or she knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

(2) Arson in the second degree is a class B felony. [2011 c 336 § 366; 1975 1st ex.s. c 260 § 9A.48.030.]

9A.48.040 Reckless burning in the first degree. (1) A person is guilty of reckless burning in the first degree if he or she recklessly damages a building or other structure or any vehicle, railway car, aircraft, or watercraft or any hay, grain, crop, or timber whether cut or standing, by knowingly causing a fire or explosion.

(2) Reckless burning in the first degree is a class C felony. [2011 c 336 § 367; 1975 1st ex.s. c 260 § 9A.48.040.]

9A.48.050 Reckless burning in the second degree. (1) A person is guilty of reckless burning in the second degree if he or she knowingly causes a fire or explosion, whether on his or her own property or that of another, and thereby recklessly places a building or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop or timber, whether cut or standing, in danger of destruction or damage.

(2) Reckless burning in the second degree is a gross misdemeanor. [2011 c 336 § 368; 1975 1st ex.s. c 260 § 9A.48.050.]

9A.48.060 Reckless burning—Defense. In any prosecution for the crime of reckless burning in the first or second degrees, it shall be a defense if the defendant establishes by a preponderance of the evidence that:

(a) No person other than the defendant had a possessory, or pecuniary interest in the damaged or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; and

(b) The defendant's sole intent was to destroy or damage the property for a lawful purpose. [1975 1st ex.s. c 260 § 9A.48.060.]

9A.48.070 Malicious mischief in the first degree. (1) A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding five thousand dollars;

(b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or

(c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.

(2) Malicious mischief in the first degree is a class B felony. [2009 c 431 § 4; 1983 1st ex.s. c 4 § 1; 1975 1st ex.s. c 260 § 9A.48.070.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.48.080 Malicious mischief in the second degree.

(1) A person is guilty of malicious mischief in the second degree if he or she knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding seven hundred fifty dollars; or

(b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication.

(2) Malicious mischief in the second degree is a class C felony. [2009 c 431 § 5; 1994 c 261 § 17; 1979 c 145 § 2; 1975 1st ex.s. c 260 § 9A.48.080.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Action by owner of stolen livestock: RCW 4.24.320.

Property crime database, liability: RCW 4.24.340.

9A.48.090 Malicious mischief in the third degree. (1)

A person is guilty of malicious mischief in the third degree if he or she:

(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

(2) Malicious mischief in the third degree is a gross misdemeanor. [2009 c 431 § 6; 2003 c 53 § 71; 1996 c 35 § 1; 1975 1st ex.s. c 260 § 9A.48.090.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Property crime database, liability: RCW 4.24.340.

9A.48.100 Malicious mischief—"Physical damage" defined. For the purposes of RCW 9A.48.070 through 9A.48.090 inclusive:

(1) "Physical damage", in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act;

(2) If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds two hundred fifty dollars, the defendant may be charged with and convicted of malicious mischief in the second degree. [1984 c 273 § 4; 1981 c 260 § 2. Prior: 1979 ex.s. c 244 § 11; 1979 c 145 § 3; 1977 ex.s. c 174 § 1; 1975 1st ex.s. c 260 § 9A.48.100.]

Action by owner of stolen livestock: RCW 4.24.320.

Computer trespass: RCW 9A.52.110 through 9A.52.130.

Additional notes found at www.leg.wa.gov

9A.48.105 Criminal street gang tagging and graffiti.

(1) A person is guilty of criminal street gang tagging and graffiti if he or she commits malicious mischief in the third degree under RCW 9A.48.090(1)(b) and he or she:

(a) Has multiple current convictions for malicious mischief in the third degree offenses under RCW 9A.48.090(1)(b); or

(b) Has previously been convicted for a malicious mischief in the third degree offense under RCW 9A.48.090(1)(b) or a comparable offense under a municipal code provision of any city or town; and

(c) The current offense or one of the current offenses is a "criminal street gang-related offense" as defined in RCW 9.94A.030.

(2) Criminal street gang tagging and graffiti is a gross misdemeanor offense. [2008 c 276 § 306.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

9A.48.110 Defacing a state monument. (1) A person is guilty of defacing a state monument if he or she knowingly defaces a monument or memorial on the state capitol campus or other state property.

(2) Defacing a state monument is a misdemeanor. [1995 c 66 § 1.]

9A.48.120 Civil disorder training. (1) A person is guilty of civil disorder training if he or she teaches or demonstrates to any other person the use, application, or making of any device or technique capable of causing significant bodily injury or death to persons, knowing, or having reason to know or intending that same will be unlawfully employed for use in, or in furtherance of, a civil disorder.

(2) Civil disorder training is a class B felony.

(3) Nothing in this section makes unlawful any act of any law enforcement officer that is performed in the lawful performance of his or her official duties.

(4) Nothing in this section makes unlawful any act of firearms training, target shooting, or other firearms activity, so long as it is not done for the purpose of furthering a civil disorder.

(5) For the purposes of this section:

(a) "Civil disorder" means any public disturbance involving acts of violence that is intended to cause an immediate danger of, or to result in, significant injury to property or the person of any other individual.

(2012 Ed.)

(b) "Law enforcement officer" means any law enforcement officer as defined in RCW 9A.76.020(2) including members of the Washington national guard, as defined in RCW 38.04.010. [2008 c 206 § 1; 2002 c 340 § 1.]

Chapter 9A.49 RCW

LASERS

Sections

9A.49.001	Findings.
9A.49.010	Definitions.
9A.49.020	Unlawful discharge of a laser in the first degree.
9A.49.030	Unlawful discharge of a laser in the second degree.
9A.49.040	Civil infraction, when.
9A.49.050	Exclusions.

9A.49.001 Findings. The legislature finds that lasers are becoming both less expensive and more accessible in our technologically advanced society. Laser devices are being used by individuals in a manner so as to intimidate and harass. This creates an especially serious problem for law enforcement officers who reasonably believe they are the target of a laser sighting device on a firearm. Additionally, emergency service providers, service providers, and others who operate aircraft or motor vehicles may be negatively affected to the point of jeopardizing their safety as well as the safety of others. In order to address the misuse of lasers, the legislature hereby finds it necessary to criminalize the discharge of lasers under certain circumstances. [1999 c 180 § 1.]

9A.49.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aircraft" means any contrivance known or hereafter invented, used, or designed for navigation of or flight in air.

(2) "Laser" means any device designed or used to amplify electromagnetic radiation by simulated [stimulated] emission which is visible to the human eye.

(3) "Laser sighting system or device" means any system or device which is integrated with or affixed to a firearm and which emits a laser light beam that is used by the shooter to assist in the sight alignment of that firearm. [1999 c 180 § 2.]

9A.49.020 Unlawful discharge of a laser in the first degree. (1) A person is guilty of unlawful discharge of a laser in the first degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to malicious mischief in the first degree:

(a) At a law enforcement officer or other employee of a law enforcement agency who is performing his or her official duties in uniform or exhibiting evidence of his or her authority, and in a manner that would support that officer's or employee's reasonable belief that he or she is targeted with a laser sighting device or system; or

(b) At a law enforcement officer or other employee of a law enforcement agency who is performing his or her official duties, causing an impairment of the safety or operation of a law enforcement vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the officer or employee; or

(c) At a pilot, causing an impairment of the safety or operation of an aircraft or causing an interruption or impairment of service rendered to the public by negatively affecting the pilot; or

(d) At a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who is performing his or her official duties, causing an impairment of the safety or operation of an emergency vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the firefighter or employee; or

(e) At a transit operator or driver of a public or private transit company while that person is performing his or her official duties, causing an impairment of the safety or operation of a transit vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the operator or driver; or

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

(2) Except as provided in RCW 9A.49.040, unlawful discharge of a laser in the first degree is a class C felony. [1999 c 180 § 3.]

9A.49.030 Unlawful discharge of a laser in the second degree. (1) A person is guilty of unlawful discharge of a laser in the second degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to unlawful discharge of a laser in the first degree or malicious mischief in the first or second degree:

(a) At a person, not described in RCW 9A.49.020(1) (a) through (f), who is operating a motor vehicle at the time, causing an impairment of the safety or operation of a motor vehicle by negatively affecting the driver; or

(b) At a person described in RCW 9A.49.020(1) (b) through (f), causing a substantial risk of an impairment or interruption as described in RCW 9A.49.020(1) (b) through (f); or

(c) At a person in order to intimidate or threaten that person.

(2) Except as provided in RCW 9A.49.040, unlawful discharge of a laser in the second degree is a gross misdemeanor. [1999 c 180 § 4.]

9A.49.040 Civil infraction, when. Unlawful discharge of a laser in the first degree or second degree is a civil infraction if committed by a juvenile who has not before committed either offense. The monetary penalty imposed upon a juvenile may not exceed one hundred dollars. [1999 c 180 § 5.]

9A.49.050 Exclusions. This chapter does not apply to the conduct of a laser development activity by or on behalf of the United States armed forces. [1999 c 180 § 6.]

Chapter 9A.50 RCW INTERFERENCE WITH HEALTH CARE FACILITIES OR PROVIDERS

Sections

9A.50.005	Finding.
9A.50.010	Definitions.
9A.50.020	Interference with health care facility.
9A.50.030	Penalty.
9A.50.040	Civil remedies.
9A.50.050	Civil damages.
9A.50.060	Informational picketing.
9A.50.070	Protection of health care patients and providers.
9A.50.900	Construction.
9A.50.901	Severability—1993 c 128.
9A.50.902	Effective date—1993 c 128.

9A.50.005 Finding. The legislature finds that seeking or obtaining health care is fundamental to public health and safety. [1993 c 128 § 1.]

9A.50.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Health care facility" means a facility that provides health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home.

(2) "Health care provider" has the same meaning as defined in RCW 7.70.020 (1) and (2), and also means an officer, director, employee, or agent of a health care facility who sues or testifies regarding matters within the scope of his or her employment.

(3) "Aggrieved" means:

(a) A person, physically present at the health care facility when the prohibited actions occur, whose access is or is about to be obstructed or impeded;

(b) A person, physically present at the health care facility when the prohibited actions occur, whose care is or is about to be disrupted;

(c) The health care facility, its employees, or agents;

(d) The owner of the health care facility or the building or property upon which the health care facility is located. [1993 c 128 § 2.]

9A.50.020 Interference with health care facility. It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by:

(1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located;

(2) Making noise that unreasonably disturbs the peace within the facility;

(3) Trespassing on the facility or the common areas of the real property upon which the facility is located;

(4) Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or

(5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose. [1993 c 128 § 3.]

9A.50.030 Penalty. A violation of RCW 9A.50.020 is a gross misdemeanor. A person convicted of violating RCW 9A.50.020 shall be punished as follows:

(1) For a first offense, a fine of not less than two hundred fifty dollars and a jail term of not less than twenty-four consecutive hours;

(2) For a second offense, a fine of not less than five hundred dollars and a jail term of not less than seven consecutive days; and

(3) For a third or subsequent offense, a fine of not less than one thousand dollars and a jail term of not less than thirty consecutive days. [1993 c 128 § 4.]

9A.50.040 Civil remedies. (1) A person or health care facility aggrieved by the actions prohibited by RCW 9A.50.020 may seek civil damages from those who committed the prohibited acts and those acting in concert with them. A plaintiff in an action brought under this chapter shall not recover more than his or her actual damages and additional sums authorized in RCW 9A.50.050. Once a plaintiff recovers his or her actual damages and any additional sums authorized under this chapter, additional damages shall not be recovered. A person does not have to be criminally convicted of violating RCW 9A.50.020 to be held civilly liable under this section. It is not necessary to prove actual damages to recover the additional sums authorized under RCW 9A.50.050, costs, and attorneys' fees. The prevailing party is entitled to recover costs and attorneys' fees.

(2) The superior courts of this state shall have authority to grant temporary, preliminary, and permanent injunctive relief to enjoin violations of this chapter.

In appropriate circumstances, any superior court having personal jurisdiction over one or more defendants may issue injunctive relief that shall have binding effect on the original defendants and persons acting in concert with the original defendants, in any county in the state.

Due to the nature of the harm involved, injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute.

The state and its political subdivisions shall cooperate in the enforcement of court injunctions that seek to protect against acts prohibited by this chapter. [1993 c 128 § 6.]

9A.50.050 Civil damages. In a civil action brought under this chapter, an individual plaintiff aggrieved by the actions prohibited by RCW 9A.50.020 may be entitled to recover up to five hundred dollars for each day that the actions occurred, or up to five thousand dollars for each day that the actions occurred if the plaintiff aggrieved by the actions prohibited under RCW 9A.50.020 is a health care facility. [1993 c 128 § 7.]

9A.50.060 Informational picketing. Nothing in RCW 9A.50.020 shall prohibit either lawful picketing or other publicity for the purpose of providing the public with information. [1993 c 128 § 8.]

(2012 Ed.)

9A.50.070 Protection of health care patients and providers. A court having jurisdiction over a criminal or civil proceeding under this chapter shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a health care patient or health care provider who is a party or witness in a proceeding, including granting protective orders and orders in limine. [1993 c 128 § 9.]

9A.50.900 Construction. Nothing in this chapter shall be construed to limit the right to seek other available criminal or civil remedies. The remedies provided in this chapter are cumulative, not exclusive. [1993 c 128 § 11.]

9A.50.901 Severability—1993 c 128. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 128 § 12.]

9A.50.902 Effective date—1993 c 128. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 26, 1993]. [1993 c 128 § 14.]

Chapter 9A.52 RCW BURGLARY AND TRESPASS

Sections

9A.52.010	Definitions.
9A.52.020	Burglary in the first degree.
9A.52.025	Residential burglary.
9A.52.030	Burglary in the second degree.
9A.52.040	Inference of intent.
9A.52.050	Other crime in committing burglary punishable.
9A.52.060	Making or having burglar tools.
9A.52.070	Criminal trespass in the first degree.
9A.52.080	Criminal trespass in the second degree.
9A.52.090	Criminal trespass—Defenses.
9A.52.095	Vehicle prowling in the first degree.
9A.52.100	Vehicle prowling in the second degree.
9A.52.110	Computer trespass in the first degree.
9A.52.120	Computer trespass in the second degree.
9A.52.130	Computer trespass—Commission of other crime.

9A.52.010 Definitions. The following definitions apply in this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

(2) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(3) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer.

(4) "Enter." The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(5) "Enters or remains unlawfully." A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land. A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.

(6) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property. [2011 c 336 § 369; 2004 c 69 § 1; 1985 c 289 § 1. Prior: 1984 c 273 § 5; 1984 c 49 § 1; 1975 1st ex.s. c 260 § 9A.52.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

9A.52.020 Burglary in the first degree. (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

(2) Burglary in the first degree is a class A felony. [1996 c 15 § 1; 1995 c 129 § 9 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.52.020.]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

9A.52.025 Residential burglary. (1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, residential burglary is to be considered a more serious offense than second degree burglary. [2011 1st sp.s. c 40 § 38; 1989 2nd ex.s. c 1 § 1; 1989 c 412 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9A.52.030 Burglary in the second degree. (1) A person is guilty of burglary in the second degree if, with intent to

commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony. [2011 c 336 § 370; 1989 2nd ex.s. c 1 § 2; 1989 c 412 § 2; 1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

Additional notes found at www.leg.wa.gov

9A.52.040 Inference of intent. In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent. [1975 1st ex.s. c 260 § 9A.52.040.]

9A.52.050 Other crime in committing burglary punishable. Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [1975 1st ex.s. c 260 § 9A.52.050.]

9A.52.060 Making or having burglar tools. (1) Every person who shall make or mend or cause to be made or mended, or have in his or her possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

(2) Making or having burglar tools is a gross misdemeanor. [2011 c 336 § 371; 1975 1st ex.s. c 260 § 9A.52.060.]

9A.52.070 Criminal trespass in the first degree. (1) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor. [2011 c 336 § 372; 1979 ex.s. c 244 § 12; 1975 1st ex.s. c 260 § 9A.52.070.]

Additional notes found at www.leg.wa.gov

9A.52.080 Criminal trespass in the second degree. (1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor. [2011 c 336 § 373; 1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § 9A.52.080.]

Additional notes found at www.leg.wa.gov

9A.52.090 Criminal trespass—Defenses. In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

(1) A building involved in an offense under RCW 9A.52.070 was abandoned; or

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process. [2011 c 336 § 374; 1986 c 219 § 2; 1975 1st ex.s. c 260 § 9A.52.090.]

9A.52.095 Vehicle prowling in the first degree. (1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a class C felony. [2011 c 336 § 375; 1982 1st ex.s. c 47 § 13.]

Additional notes found at www.leg.wa.gov

9A.52.100 Vehicle prowling in the second degree. (1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor. [2011 c 336 § 376; 1982 1st ex.s. c 47 § 14; 1975 1st ex.s. c 260 § 9A.52.100.]

Additional notes found at www.leg.wa.gov

9A.52.110 Computer trespass in the first degree. (1) A person is guilty of computer trespass in the first degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another; and

(a) The access is made with the intent to commit another crime; or

(b) The violation involves a computer or database maintained by a government agency.

(2) Computer trespass in the first degree is a class C felony. [1984 c 273 § 1.]

9A.52.120 Computer trespass in the second degree. (1) A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another under circumstances not constituting the offense in the first degree.

(2) Computer trespass in the second degree is a gross misdemeanor. [1984 c 273 § 2.]

(2012 Ed.)

9A.52.130 Computer trespass—Commission of other crime. A person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately. [1984 c 273 § 3.]

Physical damage to computer programs: RCW 9A.48.100.

Chapter 9A.56 RCW THEFT AND ROBBERY

Sections

9A.56.010	Definitions.
9A.56.020	Theft—Definition, defense.
9A.56.030	Theft in the first degree.
9A.56.040	Theft in the second degree.
9A.56.050	Theft in the third degree.
9A.56.060	Unlawful issuance of checks or drafts.
9A.56.063	Making or possessing motor vehicle theft tools.
9A.56.065	Theft of motor vehicle.
9A.56.068	Possession of stolen vehicle.
9A.56.070	Taking motor vehicle without permission in the first degree.
9A.56.075	Taking motor vehicle without permission in the second degree.
9A.56.078	Motor vehicle crimes—Civil action.
9A.56.080	Theft of livestock in the first degree.
9A.56.083	Theft of livestock in the second degree.
9A.56.085	Minimum fine for theft of livestock.
9A.56.096	Theft of rental, leased, lease-purchased, or loaned property.
9A.56.100	Theft and larceny equated.
9A.56.110	Extortion—Definition.
9A.56.120	Extortion in the first degree.
9A.56.130	Extortion in the second degree.
9A.56.140	Possessing stolen property—Definition—Presumption.
9A.56.150	Possessing stolen property in the first degree—Other than firearm or motor vehicle.
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9A.56.180	Obscuring the identity of a machine.
9A.56.190	Robbery—Definition.
9A.56.200	Robbery in the first degree.
9A.56.210	Robbery in the second degree.
9A.56.220	Theft of subscription television services.
9A.56.230	Unlawful sale of subscription television services.
9A.56.240	Forfeiture and disposal of device used to commit violation.
9A.56.250	Civil cause of action.
9A.56.260	Connection of channel converter.
9A.56.262	Theft of telecommunication services.
9A.56.264	Unlawful manufacture of telecommunication device.
9A.56.266	Unlawful sale of telecommunication device.
9A.56.268	Civil cause of action.
9A.56.270	Shopping cart theft.
9A.56.280	Credit, debit cards, checks, etc.—Definitions.
9A.56.290	Credit, payment cards—Unlawful factoring of transactions.
9A.56.300	Theft of a firearm.
9A.56.310	Possessing a stolen firearm.
9A.56.320	Financial fraud—Unlawful possession, production of instruments of.
9A.56.330	Possession of another's identification.
9A.56.340	Theft with the intent to resell.
9A.56.350	Organized retail theft.
9A.56.360	Retail theft with extenuating circumstances.
9A.56.370	Mail theft.
9A.56.380	Possession of stolen mail.
9A.56.390	Mail theft—Possession of stolen mail—Commission of other crime.

Insurance producer, appropriation of premiums: RCW 48.17.480.

Pawnbrokers and secondhand dealers: RCW 19.60.066.

Public lands, taking or destroying property is theft: RCW 79.02.310.

Public officer misappropriating funds: RCW 42.20.070, 42.20.090.

Removing native flora from state lands or highways: RCW 47.40.080.

Retaining books, etc., from public library: RCW 27.12.340.

Search and seizures: Chapter 10.79 RCW.

Stealing, receiving railroad property: RCW 81.60.080.

Stolen property, restoration, sale does not divest rights, duty of officer: RCW 10.79.050.

Sufficiency of indictment or information alleging crime of larceny: RCW 10.37.110.

9A.56.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of," "owned by," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed;

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mailbox, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mailboxes or mail addresses for cus-

tomers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mailbox, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

Mail, for purposes of chapter 164, Laws of 2011, does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third-class mail by the United States postal service;

(8) "Mailbox," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States postal service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States postal service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(10) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(11) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(14) "Received by the intended addressee" means that the addressee, owner of the delivery mailbox, or authorized agent has removed the delivered mail from its delivery mailbox;

(15) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(17) "Stolen" means obtained by theft, robbery, or extortion;

(18) "Subscription television service" means cable or encrypted video and related audio and data services intended

for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(19) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(20) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft

involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(22) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement. [2011 c 164 § 2; 2006 c 277 § 4; 2002 c 97 § 1; 1999 c 143 § 36; 1998 c 236 § 1; 1997 c 346 § 2; 1995 c 92 § 1; 1987 c 140 § 1; 1986 c 257 § 2; 1985 c 382 § 1; 1984 c 273 § 6; 1975-'76 2nd ex.s. c 38 § 8; 1975 1st ex.s. c 260 § 9A.56.010.]

Intent—2011 c 164: "It is important to the citizens of this state to have confidence in the security of the mail. Mail contains personal information, medical records, and financial documents. Theft of mail has become a serious problem in our state because mail is a key source of information for identity thieves. Currently, there is no law that adequately addresses the seriousness of this crime. This act is intended to accurately recognize the seriousness of taking personal, medical, or financial identifying information and compromising the integrity of our mail system." [2011 c 164 § 1.]

Additional notes found at www.leg.wa.gov

9A.56.020 Theft—Definition, defense. (1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that:

(a) The property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable; or

(b) The property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business. [2004 c 122 § 1; 1975-'76 2nd ex.s. c 38 § 9; 1975 1st ex.s. c 260 § 9A.56.020.]

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Additional notes found at www.leg.wa.gov

9A.56.030 Theft in the first degree. (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another;

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty; or

(d) Metal wire, taken from a public service company, as defined in RCW 80.04.010, or a consumer-owned utility, as defined in RCW 19.280.020, and the costs of the damage to the public service company's or consumer-owned utility's property exceed five thousand dollars in value.

(2) Theft in the first degree is a class B felony. [2012 c 233 § 2; 2009 c 431 § 7; 2007 c 199 § 3; 2005 c 212 § 2; 1995 c 129 § 11 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.030.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.040 Theft in the second degree. (1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;

(c) Metal wire, taken from a public service company, as defined in RCW 80.04.010, or a consumer-owned utility, as defined in RCW 19.280.020, and the costs of the damage to the public service company's or consumer-owned utility's property exceed seven hundred fifty dollars but does not exceed five thousand dollars in value; or

(d) An access device.

(2) Theft in the second degree is a class C felony. [2012 c 233 § 3; 2009 c 431 § 8; 2007 c 199 § 4; 1995 c 129 § 12 (Initiative Measure No. 159); 1994 sp.s. c 7 § 433; 1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.56.050 Theft in the third degree. (1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed seven hundred fifty dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

(2) Theft in the third degree is a gross misdemeanor. [2009 c 431 § 9; 1998 c 236 § 4; 1975 1st ex.s. c 260 § 9A.56.050.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.060 Unlawful issuance of checks or drafts. (1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he or she has not sufficient funds in, or credit with the bank or other depository, to meet the check or draft, in full upon its presentation, is guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor the check, and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing the check or draft is guilty of unlawful issuance of a bank check.

(3) When any series of transactions which constitute unlawful issuance of a bank check would, when considered separately, constitute unlawful issuance of a bank check in an amount of seven hundred fifty dollars or less because of value, and the series of transactions are a part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining whether the unlawful issuance of a bank check is to be punished as a class C felony or a gross misdemeanor.

(4) Unlawful issuance of a bank check in an amount greater than seven hundred fifty dollars is a class C felony.

(5) Unlawful issuance of a bank check in an amount of seven hundred fifty dollars or less is a gross misdemeanor and shall be punished as follows:

(a) The court shall order the defendant to make full restitution;

(b) The defendant need not be imprisoned, but the court shall impose a fine of up to one thousand one hundred twenty-five dollars. Of the fine imposed, at least three hundred seventy-five dollars or an amount equal to one hundred fifty percent of the amount of the bank check, whichever is greater, shall not be suspended or deferred. Upon conviction for a second offense within any twelve-month period, the

court may not suspend or defer any portion of the fine. [2009 c 431 § 10; 1982 c 138 § 1; 1979 ex.s. c 244 § 14; 1975 1st ex.s. c 260 § 9A.56.060.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Maintenance by state treasurer of accounts in amount less than all warrants outstanding not a violation of RCW 9A.56.060(1): RCW 43.08.135.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.56.063 Making or possessing motor vehicle theft tools. (1) Any person who makes or mends, or causes to be made or mended, uses, or has in his or her possession any motor vehicle theft tool, that is adapted, designed, or commonly used for the commission of motor vehicle related theft, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of motor vehicle theft, or knowing that the same is intended to be so used, is guilty of making or having motor vehicle theft tools.

(2) For the purpose of this section, motor vehicle theft tool includes, but is not limited to, the following: Slim jim, false master key, master purpose key, altered or shaved key, trial or jiggle key, slide hammer, lock puller, picklock, bit, nipper, any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle related theft, or knowing that the same is intended to be so used.

(3) For the purposes of this section, the following definitions apply:

(a) "False master" or "master key" is any key or other device made or altered to fit locks or ignitions of multiple vehicles, or vehicles other than that for which the key was originally manufactured.

(b) "Altered or shaved key" is any key so altered, by cutting, filing, or other means, to fit multiple vehicles or vehicles other than the vehicles for which the key was originally manufactured.

(c) "Trial keys" or "jiggler keys" are keys or sets designed or altered to manipulate a vehicle locking mechanism other than the lock for which the key was originally manufactured.

(4) Making or having motor vehicle theft tools is a gross misdemeanor. [2007 c 199 § 18.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

9A.56.065 Theft of motor vehicle. (1) A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle.

(2) Theft of a motor vehicle is a class B felony. [2007 c 199 § 2.]

Findings—Intent—2007 c 199: "(1) The legislature finds that:

(a) Automobiles are an essential part of our everyday lives. The west coast is the only region of the United States with an increase of over three percent in motor vehicle thefts over the last several years. The family car is a priority of most individuals and families. The family car is typically the second largest investment a person has next to the home, so when a car is stolen, it causes a significant loss and inconvenience to people, imposes financial hardship, and negatively impacts their work, school, and personal activities. Appropriate and meaningful penalties that are proportionate to the crime committed must be imposed on those who steal motor vehicles;

(b) In Washington, more than one car is stolen every eleven minutes, one hundred thirty-eight cars are stolen every day, someone's car has a one

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in one hundred seventy-nine chance of being stolen, and more vehicles were stolen in 2005 than in any other previous year. Since 1994, auto theft has increased over fifty-five percent, while other property crimes like burglary are on the decline or holding steady. The national crime insurance bureau reports that Seattle and Tacoma ranked in the top ten places for the most auto thefts, ninth and tenth respectively, in 2004. In 2005, over fifty thousand auto thefts were reported costing Washington citizens more than three hundred twenty-five million dollars in higher insurance rates and lost vehicles. Nearly eighty percent of these crimes occurred in the central Puget Sound region consisting of the heavily populated areas of King, Pierce, and Snohomish counties;

(c) Law enforcement has determined that auto theft, along with all the grief it causes the immediate victims, is linked more and more to offenders engaged in other crimes. Many stolen vehicles are used by criminals involved in such crimes as robbery, burglary, and assault. In addition, many people who are stopped in stolen vehicles are found to possess the personal identification of other persons, or to possess methamphetamine, precursors to methamphetamine, or equipment used to cook methamphetamine;

(d) Juveniles account for over half of the reported auto thefts with many of these thefts being their first criminal offense. It is critical that they, along with first time adult offenders, are appropriately punished for their crimes. However, it is also important that first time offenders who qualify receive appropriate counseling treatment for associated problems that may have contributed to the commission of the crime, such as drugs, alcohol, and anger management; and

(e) A coordinated and concentrated enforcement mechanism is critical to an effective statewide offensive against motor vehicle theft. Such a system provides for better communications between and among law enforcement agencies, more efficient implementation of efforts to discover, track, and arrest auto thieves, quicker recovery, and the return of stolen vehicles, saving millions of dollars in potential loss to victims and their insurers.

(2) It is the intent of this act to deter motor vehicle theft through a statewide cooperative effort by combating motor vehicle theft through tough laws, supporting law enforcement activities, improving enforcement and administration, effective prosecution, public awareness, and meaningful treatment for first time offenders where appropriate. It is also the intent of the legislature to ensure that adequate funding is provided to implement this act in order for real, observable reductions in the number of auto thefts in Washington state." [2007 c 199 § 1.]

Short title—2007 c 199: "This act shall be known as the Elizabeth Nowak-Washington auto theft prevention act." [2007 c 199 § 29.]

9A.56.068 Possession of stolen vehicle. (1) A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.

(2) Possession of a stolen motor vehicle is a class B felony. [2007 c 199 § 5.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

9A.56.070 Taking motor vehicle without permission in the first degree. (1) A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

(d) Intends to sell the motor vehicle; or

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for

sale to others for profit or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

(2) Taking a motor vehicle without permission in the first degree is a class B felony. [2007 c 199 § 16; 2003 c 53 § 72; 2002 c 324 § 1; 1975 1st ex.s. c 260 § 9A.56.070.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Study and report—2002 c 324: "The sentencing guidelines commission shall study the impact of the sentencing changes in this act upon the incidence of the crime of taking a motor vehicle without permission. By December 2004, the commission shall submit a report to the governor and the legislature. The report shall address:

(1) Whether the creation of the crime of taking a motor vehicle without permission in the first degree and the increased penalties for that new crime have resulted in a reduction in the number of convictions for taking a motor vehicle without permission in the first or second degree; and

(2) Whether there are other actions, either civil or criminal, that could have the effect of further decreasing the incidence of these crimes, including but not limited to: The revocation of driving privileges, double scoring of prior convictions, or increasing penalties for juveniles." [2002 c 324 § 4.]

9A.56.075 Taking motor vehicle without permission in the second degree. (1) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(2) Taking a motor vehicle without permission in the second degree is a class C felony. [2003 c 53 § 73.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.078 Motor vehicle crimes—Civil action. (1) A person who is deprived of his or her motor vehicle because of a violation of RCW 9A.56.030, 9A.56.040, 9A.56.070, or 9A.56.075 may file an action in superior court against the perpetrator for the recovery of actual damages, limited to the value of any damage to the vehicle and any property stolen from the vehicle, civil damages of up to five thousand dollars, and the costs of the suit, including reasonable attorneys' fees.

(2)(a) Except as provided in (b) of this subsection, service of any summons or other process under this section shall be by personal service.

(b)(i) If the defendant cannot be found after a due and diligent search, the defendant's violation of RCW 9A.56.030, 9A.56.040, 9A.56.070, or 9A.56.075 shall be deemed to constitute an appointment by the defendant of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her under this section. The plaintiff shall perform the service allowed under this subsection (2)(b)(i) by leaving two copies of the summons or other process with the secretary of state or at the secretary of state's office. Service in this manner constitutes sufficient and valid personal service upon the defendant.

(ii) After performing service under (b)(i) of this subsection, the plaintiff shall promptly send notice of service under

(b)(i) of this subsection and a copy of the summons or process to the defendant by registered mail, with return receipt requested, to the defendant's last known address. After complying with this subsection (2)(b)(ii), the plaintiff shall file the following with the secretary of state to be attached to the summons or process filed under (b)(i) of this subsection:

(A) An affidavit from the plaintiff attesting to compliance with (b)(ii) of this subsection; and

(B) An affidavit from the plaintiff's attorney that he or she has, with due diligence, attempted to serve personal process upon the defendant at all addresses known to him or her and listing the addresses at which he or she attempted to personally serve the defendant. However, if the defendant's endorsed return receipt is received, then the affidavit need only show that the defendant received personal service by mail.

(iii) The secretary of state shall send, by prepaid mail, a copy of the summons or process received under (b)(i) of this subsection to the defendant's address, if known. The secretary of state shall keep a record that shows the day of service of all summons and processes made under (b)(i) of this subsection.

(iv) The court in which an action is brought under this section may order continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action.

(v) The secretary of state may charge a fee for his or her services under (b) of this subsection. The fee shall be part of the costs of suit that may be awarded to the plaintiff.

(3) The department of licensing shall suspend the driver's license or driving privilege of a defendant until any monetary obligation imposed under subsection (1) of this section is paid in full, unless the defendant has entered into a payment plan under subsection (4) of this section.

(4) If the court determines that a person is not able to pay a monetary obligation made under subsection (1) of this section in full, the court may enter into a payment plan with the person. If the person fails to meet the obligations of the payment plan, the court may modify or revoke the plan and order the defendant to pay the obligation in full. If the court revokes the plan, it shall notify the department of licensing and the department of licensing shall suspend the driver's license or driving privilege of the defendant until the monetary obligation is paid in full.

(5) The court shall notify the department of licensing when the monetary obligation of a defendant whose license is suspended under this section is paid in full. [2007 c 393 § 1.]

9A.56.080 Theft of livestock in the first degree. (1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, willfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, goat, or sheep is guilty of theft of livestock in the first degree.

(2) Theft of livestock in the first degree is a class B felony. [2005 c 419 § 1; 2003 c 53 § 74; 1986 c 257 § 32; 1977 ex.s. c 174 § 2; 1975 1st ex.s. c 260 § 9A.56.080.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Action by owner of damaged or stolen livestock: RCW 4.24.320.

Additional notes found at www.leg.wa.gov

9A.56.083 Theft of livestock in the second degree. (1)

A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.

(2) Theft of livestock in the second degree is a class C felony. [2003 c 53 § 75.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.085 Minimum fine for theft of livestock. (1)

Whenever a person is convicted of a violation of RCW 9A.56.080 or 9A.56.083, the convicting court shall order the person to pay the amount of two thousand dollars for each animal killed or possessed.

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine.

(3) If two or more persons are convicted of any violation of this section, the amount required under this section shall be imposed upon them jointly and severally.

(4) The fine in this section shall be imposed in addition to and regardless of any penalty, including fines or costs, that is provided for any violation of this section. The amount imposed by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted payment or any installment payment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

(6) The two thousand dollars additional penalty shall be remitted by the county treasurer to the state treasurer as provided under RCW 10.82.070. [2003 c 53 § 76; 1989 c 131 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.096 Theft of rental, leased, lease-purchased, or loaned property. (1)

A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person, is guilty of theft of rental, leased, lease-purchased, or loaned property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, lease-purchase, or loan agreement; or

(b) That the renter, lessee, or borrower presented identification to the owner or the owner's agent that was materially

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false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, lease-purchase, or loan period, mailed by certified or registered mail to the renter, lessee, or borrower at: (a) The address the renter, lessee, or borrower gave when the contract was made; or (b) the renter, lessee, or borrower's last known address if later furnished in writing by the renter, lessee, borrower, or the agent of the renter, lessee, or borrower.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, lease-purchased, or loaned property.

(5)(a) Theft of rental, leased, lease-purchased, or loaned property is a class B felony if the rental, leased, lease-purchased, or loaned property is valued at five thousand dollars or more.

(b) Theft of rental, leased, lease-purchased, or loaned property is a class C felony if the rental, leased, lease-purchased, or loaned property is valued at seven hundred fifty dollars or more but less than five thousand dollars.

(c) Theft of rental, leased, lease-purchased, or loaned property is a gross misdemeanor if the rental, leased, lease-purchased, or loaned property is valued at less than seven hundred fifty dollars.

(6) The crime of theft of rental, leased, lease-purchased, or loaned property may be deemed to have been committed either at the physical location where the written agreement for the rental, lease, lease-purchase, or loan of the property was executed under subsection (1) of this section, or at the address where proper notice may be mailed to the renter, lessee, or borrower under subsection (3) of this section.

(7) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, to lease-purchase agreements as defined under RCW 63.19.010, and to vehicles loaned to prospective purchasers borrowing a vehicle by written agreement from a motor vehicle dealer licensed under chapter 46.70 RCW. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW. [2012 c 30 § 1; 2009 c 431 § 11; 2007 c 199 § 17; 2003 c 53 § 77; 1997 c 346 § 1.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Property crime database, liability: RCW 4.24.340.

9A.56.100 Theft and larceny equated. All offenses defined as larcenies outside of this title shall be treated as thefts as provided in this title. [1975 1st ex.s. c 260 § 9A.56.100.]

9A.56.110 Extortion—Definition. "Extortion" means knowingly to obtain or attempt to obtain by threat property or services of the owner, and specifically includes sexual favors.

[1999 c 143 § 37; 1983 1st ex.s. c 4 § 2; 1975-'76 2nd ex.s. c 38 § 10. Prior: 1975 1st ex.s. c 260 § 9A.56.110.]

Additional notes found at www.leg.wa.gov

9A.56.120 Extortion in the first degree. (1) A person is guilty of extortion in the first degree if he or she commits extortion by means of a threat as defined in *RCW 9A.04.110(27) (a), (b), or (c).

(2) Extortion in the first degree is a class B felony. [2011 c 336 § 377; 1975 1st ex.s. c 260 § 9A.56.120.]

*Reviser's note: RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

9A.56.130 Extortion in the second degree. (1) A person is guilty of extortion in the second degree if he or she commits extortion by means of a wrongful threat as defined in *RCW 9A.04.110(25) (d) through (j).

(2) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his or her sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

(3) Extortion in the second degree is a class C felony. [2002 c 47 § 2; 1975 1st ex.s. c 260 § 9A.56.130.]

*Reviser's note: RCW 9A.04.110 was amended by 2005 c 458 § 3, changing subsection (25) to subsection (26); was subsequently amended by 2007 c 79 § 3, changing subsection (26) to subsection (27); and was subsequently amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

Intent—2002 c 47: "The legislature intends to revise the crime of extortion in the second degree in response to the holding in *State v. Pauling*, 108 Wn. App. 445 (2001), by adding a requirement that the threat required for conviction of the offense be wrongful." [2002 c 47 § 1.]

9A.56.140 Possessing stolen property—Definition—Presumption. (1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

(3) When a person has in his or her possession, or under his or her control, stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates, as defined under RCW 9A.56.010, he or she is presumed to know that they are stolen.

(4) The presumption in subsection (3) of this section is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices, merchandise pallets, or beverage crates was without knowledge that they were stolen.

(5) In any prosecution for possessing stolen property, it is a sufficient defense that the property was merchandise pallets that were received by a pallet recycler or repairer in the

ordinary course of its business. [2004 c 122 § 2; 1998 c 236 § 3; 1987 c 140 § 3; 1975 1st ex.s. c 260 § 9A.56.140.]

9A.56.150 Possessing stolen property in the first degree—Other than firearm or motor vehicle. (1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds five thousand dollars in value.

(2) Possessing stolen property in the first degree is a class B felony. [2009 c 431 § 12; 2007 c 199 § 6; 1995 c 129 § 14 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.150.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Property crime database, liability: RCW 4.24.340.

9A.56.160 Possessing stolen property in the second degree—Other than firearm or motor vehicle. (1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds seven hundred fifty dollars in value but does not exceed five thousand dollars in value; or

(b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He or she possesses a stolen access device.

(2) Possessing stolen property in the second degree is a class C felony. [2009 c 431 § 13; 2007 c 199 § 7; 1995 c 129 § 15 (Initiative Measure No. 159); 1994 sp.s. c 7 § 434; 1987 c 140 § 4; 1975 1st ex.s. c 260 § 9A.56.160.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.56.170 Possessing stolen property in the third degree. (1) A person is guilty of possessing stolen property in the third degree if he or she possesses (a) stolen property which does not exceed seven hundred fifty dollars in value, or (b) ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

(2) Possessing stolen property in the third degree is a gross misdemeanor. [2009 c 431 § 14; 1998 c 236 § 2; 1975 1st ex.s. c 260 § 9A.56.170.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.180 Obscuring the identity of a machine. (1) A person is guilty of obscuring the identity of a machine if he or she knowingly:

(a) Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or

(b) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured.

(2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

(3) Obscuring the identity of a machine is a gross misdemeanor. [2011 c 336 § 378; 1975-'76 2nd ex.s. c 38 § 11; 1975 1st ex.s. c 260 § 9A.56.180.]

Additional notes found at www.leg.wa.gov

9A.56.190 Robbery—Definition. A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. [2011 c 336 § 379; 1975 1st ex.s. c 260 § 9A.56.190.]

9A.56.200 Robbery in the first degree. (1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; or

(b) He or she commits a robbery within and against a financial institution as defined in RCW 7.88.010 or 35.38.060.

(2) Robbery in the first degree is a class A felony. [2002 c 85 § 1; 1975 1st ex.s. c 260 § 9A.56.200.]

9A.56.210 Robbery in the second degree. (1) A person is guilty of robbery in the second degree if he or she commits robbery.

(2) Robbery in the second degree is a class B felony. [2011 c 336 § 380; 1975 1st ex.s. c 260 § 9A.56.210.]

9A.56.220 Theft of subscription television services.

(1) A person is guilty of theft of subscription television services if, with intent to avoid payment of the lawful charge of a subscription television service, he or she:

(a) Obtains or attempts to obtain subscription television service from a subscription television service company by trick, artifice, deception, use of a device or decoder, or other fraudulent means without authority from the company providing the service;

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(b) Assists or instructs a person in obtaining or attempting to obtain subscription television service without authority of the company providing the service;

(c) Makes or maintains a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with cables, wires, components, or other devices used for the distribution of subscription television services without authority from the company providing the services;

(d) Makes or maintains a modification or alteration to a device installed with the authorization of a subscription television service company for the purpose of interception or receiving a program or other service carried by the company that the person is not authorized by the company to receive; or

(e) Possesses without authority a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the program or services are encoded, filtered, scrambled, or otherwise made unintelligible, or to perform or facilitate the performance of any other acts set out in (a) through (d) of this subsection for the reception of subscription television services without authority.

(2) Theft of subscription television services is a gross misdemeanor. [1995 c 92 § 2; 1989 c 11 § 1; 1985 c 430 § 1.]

Additional notes found at www.leg.wa.gov

9A.56.230 Unlawful sale of subscription television services. (1) A person is guilty of unlawful sale of subscription television services if, with intent to avoid payment or to facilitate the avoidance of payment of the lawful charge for any subscription television service, he or she, without authorization from the subscription television service company:

(a) Publishes or advertises for sale a plan for a device that is designed in whole or in part to receive subscription television or services offered for sale by the subscription television service company, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible;

(b) Advertises for sale or lease a device or kit for a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible; or

(c) Manufactures, imports into the state of Washington, distributes, sells, leases, or offers for sale or lease a device, plan, or kit for a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible.

(2) Unlawful sale of subscription television services is a class C felony. [1995 c 92 § 3; 1985 c 430 § 2.]

Additional notes found at www.leg.wa.gov

9A.56.240 Forfeiture and disposal of device used to commit violation. Upon conviction of theft or unlawful sale of cable television services and upon motion and hearing, the court shall order the forfeiture of any decoder, descrambler, or other device used in committing the violation of RCW

9A.56.220 or 9A.56.230 as contraband and dispose of it at the court's discretion. [1985 c 430 § 3.]

Additional notes found at www.leg.wa.gov

9A.56.250 Civil cause of action. (1) In addition to the criminal penalties provided in RCW 9A.56.220 and 9A.56.230, there is created a civil cause of action for theft of subscription television services and for unlawful sale of subscription television services.

(2) A person who sustains injury to his or her person, business, or property by an act described in RCW 9A.56.220 or 9A.56.230 may file an action in superior court for recovery of damages and the costs of the suit, including reasonable investigative and attorneys' fees and costs.

(3) Upon finding a violation of RCW 9A.56.220 or 9A.56.230, in addition to the remedies described in this section, the court may impose a civil penalty not exceeding twenty-five thousand dollars.

(4) The superior court may grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain violations of RCW 9A.56.220 and 9A.56.230. [1995 c 92 § 4; 1985 c 430 § 4.]

Additional notes found at www.leg.wa.gov

9A.56.260 Connection of channel converter. No person may be charged with theft under RCW 9A.56.220 or subject to a civil cause of action under RCW 9A.56.250 for connecting a nondecoding or nondescrambling channel frequency converter, which includes cable-ready television sets, video recorders, or similar equipment, to a cable system. [1985 c 430 § 5.]

Additional notes found at www.leg.wa.gov

9A.56.262 Theft of telecommunication services. (1) A person is guilty of theft of telecommunication services if he or she knowingly and with intent to avoid payment:

(a) Uses a telecommunication device to obtain telecommunication services without having entered into a prior agreement with a telecommunication service provider to pay for the telecommunication services; or

(b) Possesses a telecommunication device.

(2) Theft of telecommunication services is a class C felony. [1995 c 92 § 6.]

Telecommunications crime: Chapter 9.26A RCW.

9A.56.264 Unlawful manufacture of telecommunication device. (1) A person is guilty of unlawful manufacture of a telecommunication device if he or she knowingly and with intent to avoid payment or to facilitate avoidance of payment:

(a) Manufactures, produces, or assembles a telecommunication device;

(b) Modifies, alters, programs, or reprograms a telecommunication device to be capable of acquiring or of facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider; or

(c) Writes, creates, or modifies a computer program that he or she knows is thereby capable of being used to manufacture a telecommunication device.

(2) Unlawful manufacture of a telecommunication device is a class C felony. [1995 c 92 § 7.]

Telecommunications crime: Chapter 9.26A RCW.

9A.56.266 Unlawful sale of telecommunication device. (1) A person is guilty of unlawful sale of a telecommunication device if he or she sells, leases, exchanges, or offers to sell, lease, or exchange:

(a) A telecommunication device, knowing that the purchaser, lessee, or recipient, or a third person, intends to use the device to avoid payment or to facilitate avoidance of payment for telecommunication services; or

(b) Any material, including data, computer software, or other information and equipment, knowing that the purchaser, lessee, or recipient, or a third person, intends to use the material to avoid payment or to facilitate avoidance of payment for telecommunication services.

(2) Unlawful sale of a telecommunication device is a class C felony. [1995 c 92 § 8.]

Telecommunications crime: Chapter 9.26A RCW.

9A.56.268 Civil cause of action. (1) In addition to the criminal penalties provided in RCW 9A.56.262 through 9A.56.266, there is created a civil cause of action for theft of telecommunication services, for unlawful manufacture of a telecommunication device, and for unlawful sale of a telecommunication device.

(2) A person who sustains injury to his or her person, business, or property by an act described in RCW 9A.56.262, 9A.56.264, or 9A.56.266 may file an action in superior court for recovery of damages and the costs of the suit, including reasonable investigative and attorneys' fees and costs.

(3) Upon finding a violation of 9A.56.262, 9A.56.264, or 9A.56.266, in addition to the remedies described in this section, the court may impose a civil penalty not exceeding twenty-five thousand dollars.

(4) The superior court may grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain violations of RCW 9A.56.262 through 9A.56.266. [1995 c 92 § 9.]

Telecommunications crime: Chapter 9.26A RCW.

9A.56.270 Shopping cart theft. (1) It is unlawful to do any of the following acts, if a shopping cart has a permanently affixed sign as provided in subsection (2) of this section:

(a) To remove a shopping cart from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart; or

(b) To be in possession of any shopping cart that has been removed from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart.

(2) This section shall apply only when a shopping cart:

(a) Has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and (d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

(3) Any person who violates any provision of this section is guilty of a misdemeanor. [1985 c 382 § 2.]

Additional notes found at www.leg.wa.gov

9A.56.280 Credit, debit cards, checks, etc.—Definitions. As used in RCW 9A.56.280, 9A.56.290, 9A.60.020, 9A.56.320, and 9A.56.330, unless the context requires otherwise:

(1) "Cardholder" means a person to whom a credit card or payment card is issued or a person who otherwise is authorized to use a credit card or payment card.

(2) "Check" means a negotiable instrument that meets the definition of "check" under RCW 62A.3-104 or a blank form instrument that would meet the definition of "check" under RCW 62A.3-104 if it were completed and signed.

(3) "Credit card" means a card, plate, booklet, credit card number, credit card account number, or other identifying symbol, instrument, or device that can be used to pay for, or to obtain on credit, goods or services.

(4) "Credit card or payment card transaction" means a sale or other transaction in which a credit card or payment card is used to pay for, or to obtain on credit, goods or services.

(5) "Credit card or payment card transaction record" means a record or evidence of a credit card or payment card transaction, including, without limitation, a paper, sales draft, instrument, or other writing and an electronic or magnetic transmission or record.

(6) "Debit card" means a card used to obtain goods or services by a transaction that debits the cardholder's account, rather than extending credit.

(7) "Financial information" means financial information as defined in RCW 9.35.005.

(8) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized under state or federal law to do business and accept deposits in Washington.

(9) "Means of identification" means means of identification as defined in RCW 9.35.005.

(10) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. "Merchant" also means a person who receives from an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(11) "Payment card" means a credit card, charge card, debit card, stored value card, or any card that is issued to an authorized card user and that allows the user to obtain goods, services, money, or anything else of value from a merchant.

(12) "Person" means an individual, partnership, corporation, trust, or unincorporated association, but does not include a financial institution or its authorized employees, representatives, or agents.

(13) "Personal identification" means any driver's license, passport, or identification card actually or purportedly issued by any federal, state, local or foreign governmental entity; any credit card or debit card; or any employee iden-

tification card actually or purportedly issued by any employer, public or private, including but not limited to a badge or identification or access card.

(14) "Reencoder" means an electronic device that places encoded information from a payment card onto a different payment card.

(15) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card. [2003 c 119 § 3; 2003 c 52 § 1; 1993 c 484 § 1.]

Reviser's note: This section was amended by 2003 c 52 § 1 and by 2003 c 119 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.56.290 Credit, payment cards—Unlawful factoring of transactions. (1) A person commits the crime of unlawful factoring of a credit card or payment card transaction if the person:

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without the permission of the authorized user of the payment card or with the intent to defraud the authorized user, another person, or a financial institution;

(b) Uses a reencoder to place information encoded on a payment card onto a different card without the permission of the authorized issuer of the card from which the information is being reencoded or with the intent to defraud the authorized user, another person, or a financial institution;

(c) Presents to or deposits with, or causes another to present to or deposit with, a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the person;

(d) Employs, solicits, or otherwise causes a merchant or an employee, representative, or agent of a merchant to present to or deposit with a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the merchant; or

(e) Employs, solicits, or otherwise causes another to become a merchant for purposes of engaging in conduct made unlawful by this section.

(2) Normal transactions conducted by or through airline reporting corporation-appointed travel agents or cruise-only travel agents recognized by passenger cruise lines are not considered factoring for the purposes of this section.

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

(4)(a) Unlawful factoring of a credit card or payment card transaction is a class C felony.

(b) A second or subsequent violation of subsection (1) of this section is a class B felony. [2003 c 119 § 4; 2003 c 52 § 2; 1993 c 484 § 2.]

Reviser's note: This section was amended by 2003 c 52 § 2 and by 2003 c 119 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.56.300 Theft of a firearm. (1) A person is guilty of theft of a firearm if he or she commits a theft of any firearm.

(2) This section applies regardless of the value of the firearm taken in the theft.

(3) Each firearm taken in the theft under this section is a separate offense.

(4) The definition of "theft" and the defense allowed against the prosecution for theft under RCW 9A.56.020 shall apply to the crime of theft of a firearm.

(5) As used in this section, "firearm" means any firearm as defined in RCW 9.41.010.

(6) Theft of a firearm is a class B felony. [1995 c 129 § 10 (Initiative Measure No. 159); 1994 sp.s. c 7 § 432.]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9A.56.310 Possessing a stolen firearm. (1) A person is guilty of possessing a stolen firearm if he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

(2) This section applies regardless of the stolen firearm's value.

(3) Each stolen firearm possessed under this section is a separate offense.

(4) The definition of "possessing stolen property" and the defense allowed against the prosecution for possessing stolen property under RCW 9A.56.140 shall apply to the crime of possessing a stolen firearm.

(5) As used in this section, "firearm" means any firearm as defined in RCW 9.41.010.

(6) Possessing a stolen firearm is a class B felony. [1995 c 129 § 13 (Initiative Measure No. 159).]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

9A.56.320 Financial fraud—Unlawful possession, production of instruments of. (1) A person is guilty of unlawful production of payment instruments if he or she prints or produces a check or other payment instrument in the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to manufacture or reproduce such payment instrument with such name, routing number, or account number.

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

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

(ii) In the name of a fictitious person or entity, or with a fictitious routing number or account number of a person or

entity, with intent to use the payment instruments to commit theft, forgery, or identity theft.

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

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

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

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

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

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

(6) This section does not apply to:

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

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

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

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

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

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

(8) A violation of this section is a class C felony. [2003 c 119 § 1.]

9A.56.330 Possession of another's identification. (1) A person is guilty of possession of another's identification if the person knowingly possesses personal identification bearing another person's identity, when the person possessing the personal identification does not have the other person's per-

mission to possess it, and when the possession does not amount to a violation of RCW 9.35.020.

(2) This section does not apply to:

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

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

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

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

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

(4) A violation of this section is a gross misdemeanor. [2003 c 119 § 2.]

9A.56.340 Theft with the intent to resell. (1) A person is guilty of theft with the intent to resell if he or she commits theft of property with a value of at least two hundred fifty dollars from a mercantile establishment with the intent to resell the property for monetary or other gain.

(2) The person is guilty of theft with the intent to resell in the first degree if the property has a value of one thousand five hundred dollars or more. Theft with the intent to resell in the first degree is a class B felony.

(3) The person is guilty of theft with the intent to resell in the second degree if the property has a value of at least two hundred fifty dollars, but less than one thousand five hundred dollars. Theft with the intent to resell in the second degree is a class C felony.

(4) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the theft with the intent to resell involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred. [2006 c 277 § 1.]

9A.56.350 Organized retail theft. (1) A person is guilty of organized retail theft if he or she:

(a) Commits theft of property with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice;

(b) Possesses stolen property, as defined in RCW 9A.56.140, with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice; or

(c) Commits theft of property with a cumulative value of at least seven hundred fifty dollars from one or more mercan-

tile establishments within a period of up to one hundred eighty days.

(2) A person is guilty of organized retail theft in the first degree if the property stolen or possessed has a value of five thousand dollars or more. Organized retail theft in the first degree is a class B felony.

(3) A person is guilty of organized retail theft in the second degree if the property stolen or possessed has a value of at least seven hundred fifty dollars, but less than five thousand dollars. Organized retail theft in the second degree is a class C felony.

(4) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which any one of the thefts occurred.

(5) The mercantile establishment or establishments whose property is alleged to have been stolen may request that the charge be aggregated with other thefts of property about which the mercantile establishment or establishments is aware. In the event a request to aggregate the prosecution is declined, the mercantile establishment or establishments shall be promptly advised by the prosecuting jurisdiction making the decision to decline aggregating the prosecution of the decision and the reasons for such decision. [2009 c 431 § 15; 2006 c 277 § 2.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.360 Retail theft with extenuating circumstances. (1) A person commits retail theft with extenuating circumstances if he or she commits theft of property from a mercantile establishment with one of the following extenuating circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.

(2) A person is guilty of retail theft with extenuating circumstances in the first degree if the theft involved constitutes theft in the first degree. Retail theft with extenuating circumstances in the first degree is a class B felony.

(3) A person is guilty of retail theft with extenuating circumstances in the second degree if the theft involved constitutes theft in the second degree. Retail theft with extenuating circumstances in the second degree is a class C felony.

(4) A person is guilty of retail theft with extenuating circumstances in the third degree if the theft involved constitutes theft in the third degree. Retail theft with extenuating circumstances in the third degree is a class C felony. [2006 c 277 § 3.]

9A.56.370 Mail theft. (1) A person is guilty of mail theft if he or she: (a) Commits theft of mail addressed to three or more different addresses; and (b) commits theft of a minimum of ten separate pieces of mail.

(2) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.

(3) Mail theft is a class C felony. [2011 c 164 § 3.]

Intent—2011 c 164: See note following RCW 9A.56.010.

9A.56.380 Possession of stolen mail. (1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mailboxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner, or the person to whom the mail is addressed.

(3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.

(4) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.

(5) Possession of stolen mail is a class C felony. [2011 c 164 § 4.]

Intent—2011 c 164: See note following RCW 9A.56.010.

9A.56.390 Mail theft—Possession of stolen mail—Commission of other crime. Every person who, in the commission of mail theft or possession of stolen mail, shall commit any other crime, may be punished therefor as well as for the mail theft or possession of stolen mail, and may be prosecuted for each crime separately. [2011 c 164 § 5.]

Intent—2011 c 164: See note following RCW 9A.56.010.

Chapter 9A.58 RCW

IDENTIFICATION DOCUMENTS

Sections

9A.58.005	Findings.
9A.58.010	Definitions.
9A.58.020	Possessing, or reading or capturing, information contained on another person's identification document—Exceptions.
9A.58.030	Violation—Consumer protection act.

9A.58.005 Findings. The legislature finds that:

(1) Washington state recognizes the importance of protecting its citizens from unwanted wireless surveillance.

(2) Enhanced drivers' licenses and enhanced identicards are intended to facilitate efficient travel at land and sea borders between the United States, Canada, and Mexico, not to facilitate the profiling and tracking of individuals.

(3) Easy access to the information found on enhanced drivers' licenses and enhanced identicards could facilitate the commission of other unwanted offenses, such as identity theft. [2008 c 200 § 1.]

[Title 9A RCW—page 62]

9A.58.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Enhanced driver's license" means a driver's license that is issued under RCW 46.20.202.

(2) "Enhanced identicard" means an identicard that is issued under RCW 46.20.202.

(3) "Identification document" means an enhanced driver's license or an enhanced identicard.

(4) "Radio frequency identification" means a technology that uses radio waves to transmit data remotely to readers.

(5) "Reader" means a scanning device that is capable of using radio waves to communicate with an identification document and read the data transmitted by the identification document.

(6) "Remotely" means that no physical contact between the identification document and a reader is necessary in order to transmit data using radio waves.

(7) "Unique personal identifier number" means a randomly assigned string of numbers or symbols issued by the department of licensing that is encoded on an identification document and is intended to be read remotely by a reader to identify the identification document that has been issued to a particular individual. [2008 c 200 § 2.]

9A.58.020 Possessing, or reading or capturing, information contained on another person's identification document—Exceptions. (1) Except as provided in subsection (2) of this section, a person is guilty of a class C felony if the person intentionally possesses, or reads or captures remotely using radio waves, information contained on another person's identification document, including the unique personal identifier number encoded on the identification document, without that person's express knowledge or consent.

(2) This section does not apply to:

(a) A person or entity that reads an identification document to facilitate border crossing;

(b) A person or entity that reads a person's identification document in the course of an act of good faith security research, experimentation, or scientific inquiry including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities; or

(c) A person or entity that unintentionally reads an identification document remotely in the course of operating its own radio frequency identification system, provided that the inadvertently received information:

(i) Is not disclosed to any other party;

(ii) Is not used for any purpose; and

(iii) Is not stored or is promptly destroyed. [2008 c 200 § 3.]

9A.58.030 Violation—Consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying chapter 19.86 RCW. [2008 c 200 § 4.]

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**Chapter 9A.60 RCW
FRAUD**

Sections

- 9A.60.010 Definitions.
- 9A.60.020 Forgery.
- 9A.60.030 Obtaining a signature by deception or duress.
- 9A.60.040 Criminal impersonation in the first degree.
- 9A.60.045 Criminal impersonation in the second degree.
- 9A.60.050 False certification.
- 9A.60.060 Fraudulent creation or revocation of a mental health advance directive.
- 9A.60.070 False academic credentials—Unlawful issuance or use—Definitions—Penalties.

- Ballots, forgery: RCW 29A.84.410.*
- Cigarette tax stamps, forgery: RCW 82.24.100.*
- False representations: Chapter 9.38 RCW.*
- Food, drugs, and cosmetics act: Chapter 69.04 RCW.*
- Forest products, forgery of brands or marks: RCW 76.36.110, 76.36.120.*
- Forged instruments, tools for making, search and seizure: RCW 10.79.015.*
- Forgery: RCW 9A.60.020.*
- Frauds and swindles: Chapter 9.45 RCW.*
- Honey act: RCW 69.28.180.*
- Land registration forgery: RCW 65.12.760.*
- Misdescription of instrument forged immaterial: RCW 10.37.080.*
- Mutual savings bank, falsification: RCW 32.04.100.*
- Obtaining employment by forged recommendation: RCW 49.44.040.*
- Offering forged instrument for filing: RCW 40.16.030.*
- Optometry certificates falsification: RCW 18.53.140, 18.53.150.*
- Osteopathy license falsification: RCW 18.57.160.*
- Public bonds, forgery: Chapter 39.44 RCW.*
- Public works, falsification of records, etc.: RCW 39.04.110, 39.12.050.*

9A.60.010 Definitions. The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

- (1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;
- (2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;
- (4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;
- (5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;
- (6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
- (7) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value,

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right, privilege, or identification. [2011 c 336 § 381; 1999 c 143 § 38; 1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

9A.60.020 Forgery. (1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

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

(3) Forgery is a class C felony. [2011 c 336 § 382; 2003 c 119 § 5; 1975-'76 2nd ex.s. c 38 § 13; 1975 1st ex.s. c 260 § 9A.60.020.]

Additional notes found at www.leg.wa.gov

9A.60.030 Obtaining a signature by deception or duress. (1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument.

(2) Obtaining a signature by deception or duress is a class C felony. [2011 c 336 § 383; 1975-'76 2nd ex.s. c 38 § 14; 1975 1st ex.s. c 260 § 9A.60.030.]

Additional notes found at www.leg.wa.gov

9A.60.040 Criminal impersonation in the first degree. (1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a class C felony. [2004 c 11 § 1; 2003 c 53 § 78; 1993 c 457 § 1; 1975 1st ex.s. c 260 § 9A.60.040.]

Effective date—2004 c 11: "This act takes effect July 1, 2004." [2004 c 11 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.60.045 Criminal impersonation in the second degree. (1) A person is guilty of criminal impersonation in the second degree if the person:

(a)(i) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(ii) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to

convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer; or

(b) Falsely assumes the identity of a veteran or active duty member of the armed forces of the United States with intent to defraud for the purpose of personal gain or to facilitate any unlawful activity.

(2) Criminal impersonation in the second degree is a gross misdemeanor. [2004 c 124 § 1; 2004 c 11 § 2; 2003 c 53 § 79.]

Reviser's note: This section was amended by 2004 c 11 § 2 and by 2004 c 124 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2004 c 124: "This act takes effect July 1, 2004." [2004 c 124 § 2.]

Effective date—2004 c 11: See note following RCW 9A.60.040.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.60.050 False certification. (1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he or she knowingly certifies falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor. [2011 c 336 § 384; 1975-'76 2nd ex.s. c 38 § 15; 1975 1st ex.s. c 260 § 9A.60.050.]

Additional notes found at www.leg.wa.gov

9A.60.060 Fraudulent creation or revocation of a mental health advance directive. (1) For purposes of this section "mental health advance directive" means a written document that is a "mental health advance directive" as defined in RCW 71.32.020.

(2) A person is guilty of fraudulent creation or revocation of a mental health advance directive if he or she knowingly:

(a) Makes, completes, alters, or revokes the mental health advance directive of another without the principal's consent;

(b) Utters, offers, or puts off as true a mental health advance directive that he or she knows to be forged; or

(c) Obtains or prevents the signature of a principal or witness to a mental health advance directive by deception or duress.

(3) Fraudulent creation or revocation of a mental health advance directive is a class C felony. [2003 c 283 § 31.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

9A.60.070 False academic credentials—Unlawful issuance or use—Definitions—Penalties. (1) A person is guilty of issuing a false academic credential if the person knowingly:

(a) Grants or awards a false academic credential or offers to grant or award a false academic credential in violation of this section;

(b) Represents that a credit earned or granted by the person in violation of this section can be applied toward a credential offered by another person;

(c) Grants or offers to grant a credit for which a representation as described in (b) of this subsection is made; or

(d) Solicits another person to seek a credential or to earn a credit the person knows is offered in violation of this section.

(2) A person is guilty of knowingly using a false academic credential if the person knowingly uses a false academic credential or falsely claims to have a credential issued by an institution of higher education that is accredited by an accrediting association recognized as such by rule of the student achievement council:

(a) In a written or oral advertisement or other promotion of a business; or

(b) With the intent to:

(i) Obtain employment;

(ii) Obtain a license or certificate to practice a trade, profession, or occupation;

(iii) Obtain a promotion, compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) Obtain admission to an educational program in this state; or

(v) Gain a position in government with authority over another person, regardless of whether the person receives compensation for the position.

(3) The definitions in this subsection apply throughout this section and RCW 28B.85.220.

(a) "False academic credential" means a document that provides evidence or demonstrates completion of an academic or professional course of instruction beyond the secondary level that results in the attainment of an academic certificate, degree, or rank, and that is not issued by a person or entity that: (i) Is an entity accredited by an agency recognized as such by rule of the student achievement council or has the international equivalents of such accreditation; or (ii) is an entity authorized as a degree-granting institution by the student achievement council; or (iii) is an entity exempt from the requirements of authorization as a degree-granting institution by the student achievement council; or (iv) is an entity that has been granted a waiver by the student achievement council from the requirements of authorization by the council. Such documents include, but are not limited to, academic certificates, degrees, coursework, degree credits, transcripts, or certification of completion of a degree.

(b) "Grant" means award, bestow, confer, convey, sell, or give.

(c) "Offer," in addition to its usual meanings, means advertise, publicize, or solicit.

(d) "Operate" includes but is not limited to the following:

(i) Offering courses in person, by correspondence, or by electronic media at or to any Washington location for degree credit;

(ii) Granting or offering to grant degrees in Washington;

(iii) Maintaining or advertising a Washington location, mailing address, computer server, or telephone number, for any purpose, other than for contact with the institution's former students for any legitimate purpose related to the students having attended the institution.

(4) Issuing a false academic credential is a class C felony.

(5) Knowingly using a false academic credential is a gross misdemeanor. [2012 c 229 § 501; 2006 c 234 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Chapter 9A.61 RCW DEFRAUDING A PUBLIC UTILITY

Sections

9A.61.010	Definitions.
9A.61.020	Defrauding a public utility.
9A.61.030	Defrauding a public utility in the first degree.
9A.61.040	Defrauding a public utility in the second degree.
9A.61.050	Defrauding a public utility in the third degree.
9A.61.060	Restitution and costs.
9A.61.070	Damages not precluded.

9A.61.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Customer" means the person in whose name a utility service is provided.

(2) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.

(3) "Person" means an individual, partnership, firm, association, or corporation or government agency.

(4) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility.

(5) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function.

(6) "Utility" means an electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes an electrical, gas, or water system operated by a public agency.

(7) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation. [1989 c 109 § 1.]

9A.61.020 Defrauding a public utility. "Defrauding a public utility" means to commit, authorize, solicit, aid, abet, or attempt to:

(1) Divert, or cause to be diverted, utility services by any means whatsoever;

(2) Make, or cause to be made, a connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(3) Prevent a utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(4) Tamper with property owned or used by the utility to provide utility services; or

(5) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility. [1989 c 109 § 2.]

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9A.61.030 Defrauding a public utility in the first degree. (1) A person is guilty of defrauding a public utility in the first degree if:

(a) The utility service diverted or used exceeds one thousand five hundred dollars in value; or

(b) Tampering has occurred in furtherance of other criminal activity.

(2) Defrauding a public utility in the first degree is a class B felony. [1989 c 109 § 3.]

9A.61.040 Defrauding a public utility in the second degree. (1) A person is guilty of defrauding a public utility in the second degree if the utility service diverted or used exceeds five hundred dollars in value.

(2) Defrauding a public utility in the second degree is a class C felony. [1989 c 109 § 4.]

9A.61.050 Defrauding a public utility in the third degree. (1) A person is guilty of defrauding a public utility in the third degree if:

(a) The utility service diverted or used is five hundred dollars or less in value; or

(b) A connection or reconnection has occurred without authorization or consent of the utility.

(2) Defrauding a public utility in the third degree is a gross misdemeanor. [1989 c 109 § 5.]

9A.61.060 Restitution and costs. In any prosecution under this section, the court may require restitution from the defendant as provided by chapter 9A.20 RCW, plus court costs plus the costs incurred by the utility on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses. [1989 c 109 § 6.]

9A.61.070 Damages not precluded. Restitution ordered or fines imposed under this chapter do not preclude a utility from collecting damages under RCW 80.28.240 to which it may be entitled. [1989 c 109 § 7.]

Chapter 9A.64 RCW FAMILY OFFENSES

Sections

9A.64.010	Bigamy.
9A.64.020	Incest.
9A.64.030	Child selling—Child buying.

9A.64.010 Bigamy. (1) A person is guilty of bigamy if he or she intentionally marries or purports to marry another person when either person has a living spouse.

(2) In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:

(a) The actor reasonably believed that the prior spouse was dead; or

(b) A court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or

(c) The actor reasonably believed that he or she was legally eligible to marry.

(3) The limitation imposed by RCW 9A.04.080 on commencing a prosecution for bigamy does not begin to run until the death of the prior or subsequent spouse of the actor or until a court enters a judgment terminating or annulling the prior or subsequent marriage.

(4) Bigamy is a class C felony. [2011 c 336 § 385; 1986 c 257 § 14; 1975 1st ex.s. c 260 § 9A.64.010.]

Additional notes found at www.leg.wa.gov

9A.64.020 Incest. (1)(a) A person is guilty of incest in the first degree if he or she engages in sexual intercourse with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the first degree is a class B felony.

(2)(a) A person is guilty of incest in the second degree if he or she engages in sexual contact with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the second degree is a class C felony.

(3) As used in this section:

(a) "Descendant" includes stepchildren and adopted children under eighteen years of age;

(b) "Sexual contact" has the same meaning as in RCW 9A.44.010; and

(c) "Sexual intercourse" has the same meaning as in RCW 9A.44.010. [2003 c 53 § 80; 1999 c 143 § 39; 1985 c 53 § 1; 1982 c 129 § 3; 1975 1st ex.s. c 260 § 9A.64.020.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9A.64.030 Child selling—Child buying. (1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under RCW 26.33.020; or

(c) The transaction is between the person receiving or to receive the child and a state agency or other governmental agency; or

(d) The transaction is pursuant to chapter 26.34 RCW; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3)(a) Child selling is a class C felony.

(b) Child buying is a class C felony. [2003 c 53 § 81; 1985 c 7 § 3; 1980 c 85 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

Chapter 9A.68 RCW BRIBERY AND CORRUPT INFLUENCE

Sections

9A.68.010	Bribery.
9A.68.020	Requesting unlawful compensation.
9A.68.030	Receiving or granting unlawful compensation.
9A.68.040	Trading in public office.
9A.68.050	Trading in special influence.
9A.68.060	Commercial bribery.

Banks and trust companies, misconduct by employees: RCW 30.12.110.

Baseball, bribery and illegal practices: Chapter 67.04 RCW.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Bribery or corruption offender as witness: RCW 9.18.080.

Cities and towns, commission form, misconduct of officers and employees: RCW 35.17.150.

County officers, misconduct: RCW 36.18.160, 36.18.170.

Elections, bribery or coercion: Chapter 29A.84 RCW.

Employees, corrupt influencing, grafting by: RCW 49.44.060.

Insurance, fraud and unfair practices: Chapter 48.30 RCW.

Labor representative bribery: RCW 49.44.020, 49.44.030.

Misconduct in signing a petition: RCW 9.44.080.

Public officers, misconduct: Chapter 42.20 RCW.

School officials, grafting: RCW 28A.635.050.

Wages, rebating by employers: RCW 49.52.050, 49.52.090.

9A.68.010 Bribery. (1) A person is guilty of bribery if:

(a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his or her official capacity, he or she offers, confers, or agrees to confer any pecuniary benefit upon such public servant; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.

(2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he or she had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class B felony. [2011 c 336 § 386; 1975 1st ex.s. c 260 § 9A.68.010.]

9A.68.020 Requesting unlawful compensation. (1) A public servant is guilty of requesting unlawful compensation if he or she requests a pecuniary benefit for the performance of an official action knowing that he or she is required to perform that action without compensation or at a level of compensation lower than that requested.

(2) Requesting unlawful compensation is a class C felony. [2011 c 336 § 387; 1975 1st ex.s. c 260 § 9A.68.020.]

9A.68.030 Receiving or granting unlawful compensation. (1) A person is guilty of receiving or granting unlawful compensation if:

(a) Being a public servant, he or she requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding

which he or she knows he or she is likely to have an official discretion to exercise; or

(b) He or she knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction regarding which the public servant is likely to have an official discretion to exercise.

(2) Receiving or granting unlawful compensation is a class C felony. [2011 c 336 § 388; 1975 1st ex.s. c 260 § 9A.68.030.]

9A.68.040 Trading in public office. (1) A person is guilty of trading in public office if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed to a public office; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed to a public office.

(2) Trading in public office is a class C felony. [2011 c 336 § 389; 1975 1st ex.s. c 260 § 9A.68.040.]

9A.68.050 Trading in special influence. (1) A person is guilty of trading in special influence if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter; or

(b) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.

(2) Trading in special influence is a class C felony. [2011 c 336 § 390; 1975 1st ex.s. c 260 § 9A.68.050.]

9A.68.060 Commercial bribery. (1) For purposes of this section:

(a) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(b) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(c) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(d) "Trusted person" means:

(i) An agent, employee, or partner of another;

(ii) An administrator, executor, conservator, guardian, receiver, or trustee of a person or an estate, or any other person acting in a fiduciary capacity;

(iii) An accountant, appraiser, attorney, physician, or other professional adviser;

(iv) An officer or director of a corporation, or any other person who participates in the affairs of a corporation, partnership, or unincorporated association; or

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(v) An arbitrator, mediator, or other purportedly disinterested adjudicator or referee.

(2) A person is guilty of commercial bribery if:

(a) He or she offers, confers, or agrees to confer a pecuniary benefit directly or indirectly upon a trusted person under a request, agreement, or understanding that the trusted person will violate a duty of fidelity or trust arising from his or her position as a trusted person;

(b) Being a trusted person, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself, herself, or another under a request, agreement, or understanding that he or she will violate a duty of fidelity or trust arising from his or her position as a trusted person; or

(c) Being an employee or agent of an insurer, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself or herself, or a person other than the insurer, under a request, agreement, or understanding that he or she will or a threat that he or she will not refer or induce claimants to have services performed by a service provider.

(3) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because the person had not yet assumed his or her position, lacked authority, or for any other reason.

(4) Commercial bribery is a class B felony. [2001 c 224 § 2. Prior: 1995 c 285 § 29.]

Purpose—2001 c 224: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, the law relating to the crime of commercial bribery, enacted as sections 29 and 37(5), chapter 285, Laws of 1995." [2001 c 224 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 9A.72 RCW PERJURY AND INTERFERENCE WITH OFFICIAL PROCEEDINGS

Sections

9A.72.010	Definitions.
9A.72.020	Perjury in the first degree.
9A.72.030	Perjury in the second degree.
9A.72.040	False swearing.
9A.72.050	Perjury and false swearing—Inconsistent statements—Degree of crime.
9A.72.060	Perjury and false swearing—Retraction.
9A.72.070	Perjury and false swearing—Irregularities no defense.
9A.72.080	Statement of what one does not know to be true.
9A.72.085	Unsworn statements, certification.
9A.72.090	Bribing a witness.
9A.72.100	Bribe receiving by a witness.
9A.72.110	Intimidating a witness.
9A.72.120	Tampering with a witness.
9A.72.130	Intimidating a juror.
9A.72.140	Jury tampering.
9A.72.150	Tampering with physical evidence.
9A.72.160	Intimidating a judge.

Committal of witness committing perjury: RCW 9.72.090.

9A.72.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding. [2001 c 171 § 2. Prior: 1995 c 285 § 30; 1981 c 187 § 1; 1975 1st ex.s. c 260 § 9A.72.010.]

Purpose—2001 c 171: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting, without changes, legislation relating to the crime of perjury, as amended in sections 30 and 31, chapter 285, Laws of 1995." [2001 c 171 § 1.]

Additional notes found at www.leg.wa.gov

9A.72.020 Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a class B felony. [2011 c 336 § 391; 1975 1st ex.s. c 260 § 9A.72.020.]

9A.72.030 Perjury in the second degree. (1) A person is guilty of perjury in the second degree if, in an examination under oath under the terms of a contract of insurance, or with intent to mislead a public servant in the performance of his or her duty, he or she makes a materially false statement, which he or she knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a class C felony. [2001 c 171 § 3. Prior: 1995 c 285 § 31; 1975 1st ex.s. c 260 § 9A.72.030.]

Purpose—Effective date—2001 c 171: See notes following RCW 9A.72.010.

Additional notes found at www.leg.wa.gov

9A.72.040 False swearing. (1) A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law.

(2) False swearing is a gross misdemeanor. [2011 c 336 § 392; 1975 1st ex.s. c 260 § 9A.72.040.]

9A.72.050 Perjury and false swearing—Inconsistent statements—Degree of crime. (1) Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.

(2) The highest offense of which a person may be convicted in such an instance as set forth in subsection (1) of this section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this section, no corroboration shall be required of either inconsistent statement. [1975 1st ex.s. c 260 § 9A.72.050.]

9A.72.060 Perjury and false swearing—Retraction. No person shall be convicted of perjury or false swearing if he or she retracts his or her false statement in the course of the same proceeding in which it was made, if in fact he or she does so before it becomes manifest that the falsification is or will be exposed and before the falsification substantially affects the proceeding. Statements made in separate hearings at separate stages of the same trial, administrative, or other official proceeding shall be treated as if made in the course of the same proceeding. [2011 c 336 § 393; 1975-'76 2nd ex.s. c 38 § 16; 1975 1st ex.s. c 260 § 9A.72.060.]

Additional notes found at www.leg.wa.gov

9A.72.070 Perjury and false swearing—Irregularities no defense. It is no defense to a prosecution for perjury or false swearing:

(1) That the oath was administered or taken in an irregular manner; or

(2) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law. [1975 1st ex.s. c 260 § 9A.72.070.]

9A.72.080 Statement of what one does not know to be true. Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he

or she knows to be false. [2011 c 336 § 394; 1975 1st ex.s. c 260 § 9A.72.080.]

9A.72.085 Unsworn statements, certification. Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter in an official proceeding is required or permitted to be supported, evidenced, established, or proved by a person's sworn written statement, declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved in the official proceeding by an unsworn written statement, declaration, verification, or certificate, which:

- (1) Recites that it is certified or declared by the person to be true under penalty of perjury;
- (2) Is subscribed by the person;
- (3) States the date and place of its execution; and
- (4) States that it is so certified or declared under the laws of the state of Washington.

The certification or declaration may be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":

.....
(Date and Place)

(Signature)

This section does not apply to writings requiring an acknowledgment, depositions, oaths of office, or oaths required to be taken before a special official other than a notary public. [1981 c 187 § 3.]

9A.72.090 Bribing a witness. (1) A person is guilty of bribing a witness if he or she offers, confers, or agrees to confer any benefit upon a witness or a person he or she has reason to believe is about to be called as a witness in any official proceeding or upon a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child, with intent to:

- (a) Influence the testimony of that person; or
- (b) Induce that person to avoid legal process summoning him or her to testify; or
- (c) Induce that person to absent himself or herself from an official proceeding to which he or she has been legally summoned; or
- (d) Induce that person to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) Bribing a witness is a class B felony. [1994 c 271 § 202; 1982 1st ex.s. c 47 § 16; 1975 1st ex.s. c 260 § 9A.72.090.]

Finding—1994 c 271: "The legislature finds that witness intimidation and witness tampering serve to thwart both the effective prosecution of criminal conduct in the state of Washington and resolution of child dependencies.

Further, the legislature finds that intimidating persons who have information pertaining to a future proceeding serves to prevent both the bringing of a charge and prosecution of such future proceeding. The legislature finds that the period before a crime or child abuse or neglect is reported is when a victim is most vulnerable to influence, both from the defendant or from people acting on behalf of the defendant and a time when the defendant is most able to threaten, bribe, and/or persuade potential witnesses to leave the jurisdiction or withhold information from law enforcement agencies.

The legislature moreover finds that a criminal defendant's admonishment or demand to a witness to "drop the charges" is intimidating to witnesses or other persons with information relevant to a criminal proceeding.

The legislature finds, therefore, that tampering with and/or intimidating witnesses or other persons with information relevant to a present or future criminal or child dependency proceeding are grave offenses which adversely impact the state's ability to promote public safety and prosecute criminal behavior." [1994 c 271 § 201.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.72.100 Bribe receiving by a witness. (1) A witness or a person who has reason to believe he or she is about to be called as a witness in any official proceeding or that he or she may have information relevant to a criminal investigation or the abuse or neglect of a minor child is guilty of bribe receiving by a witness if he or she requests, accepts, or agrees to accept any benefit pursuant to an agreement or understanding that:

- (a) The person's testimony will thereby be influenced; or
- (b) The person will attempt to avoid legal process summoning him or her to testify; or
- (c) The person will attempt to absent himself or herself from an official proceeding to which he or she has been legally summoned; or
- (d) The person will not report information he or she has relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) Bribe receiving by a witness is a class B felony. [1994 c 271 § 203; 1982 1st ex.s. c 47 § 17; 1975 1st ex.s. c 260 § 9A.72.100.]

Finding—1994 c 271: See note following RCW 9A.72.090.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.72.110 Intimidating a witness. (1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

- (a) Influence the testimony of that person;
- (b) Induce that person to elude legal process summoning him or her to testify;
- (c) Induce that person to absent himself or herself from such proceedings; or
- (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.

(3) As used in this section:

- (a) "Threat" means:
 - (i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (ii) Threat as defined in *RCW 9A.04.110(27).
- (b) "Current or prospective witness" means:

(i) A person endorsed as a witness in an official proceeding;

(ii) A person whom the actor believes may be called as a witness in any official proceeding; or

(iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.

(c) "Former witness" means:

(i) A person who testified in an official proceeding;

(ii) A person who was endorsed as a witness in an official proceeding;

(iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or

(iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.

(4) Intimidating a witness is a class B felony.

(5) For purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense. [2011 c 165 § 2; 1997 c 29 § 1; 1994 c 271 § 204; 1985 c 327 § 2; 1982 1st ex.s. c 47 § 18; 1975 1st ex.s. c 260 § 9A.72.110.]

***Reviser's note:** RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

Intent—2011 c 165: "In response to *State v. Hall*, 168 Wn.2d 726 (2010), the legislature intends to clarify that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness." [2011 c 165 § 1.]

Finding—1994 c 271: See note following RCW 9A.72.090.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.72.120 Tampering with a witness. (1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself or herself from such proceedings; or

(c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

(2) Tampering with a witness is a class C felony.

(3) For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense. [2011 c 165 § 3; 1994 c 271 § 205; 1982 1st ex.s. c 47 § 19; 1975 1st ex.s. c 260 § 9A.72.120.]

Intent—2011 c 165: See note following RCW 9A.72.110.

Finding—1994 c 271: See note following RCW 9A.72.090.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.72.130 Intimidating a juror. (1) A person is guilty of intimidating a juror if a person directs a threat to a former juror because of the juror's vote, opinion, decision, or other

official action as a juror, or if, by use of a threat, he or she attempts to influence a juror's vote, opinion, decision, or other official action as a juror.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110.

(3) Intimidating a juror is a class B felony. [2011 c 336 § 395; 1985 c 327 § 3; 1975 1st ex.s. c 260 § 9A.72.130.]

9A.72.140 Jury tampering. (1) A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he or she attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a gross misdemeanor. [2011 c 336 § 396; 1975 1st ex.s. c 260 § 9A.72.140.]

9A.72.150 Tampering with physical evidence. (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

(b) Knowingly presents or offers any false physical evidence.

(2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a gross misdemeanor. [2011 c 336 § 397; 1975 1st ex.s. c 260 § 9A.72.150.]

9A.72.160 Intimidating a judge. (1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in *RCW 9A.04.110(25).

(3) Intimidating a judge is a class B felony. [1985 c 327 § 1.]

***Reviser's note:** RCW 9A.04.110 was amended by 2005 c 458 § 3, changing subsection (25) to subsection (26); was subsequently amended by 2007 c 79 § 3, changing subsection (26) to subsection (27); and was subsequently amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

Chapter 9A.76 RCW

OBSTRUCTING GOVERNMENTAL OPERATION

Sections

9A.76.010 Definitions.

9A.76.020 Obstructing a law enforcement officer.

- 9A.76.023 Disarming a law enforcement or corrections officer.
- 9A.76.025 Disarming a law enforcement or corrections officer—Commission of another crime.
- 9A.76.027 Law enforcement or corrections officer engaged in criminal conduct.
- 9A.76.030 Refusing to summon aid for a peace officer.
- 9A.76.040 Resisting arrest.
- 9A.76.050 Rendering criminal assistance—Definition of term.
- 9A.76.060 Relative defined.
- 9A.76.070 Rendering criminal assistance in the first degree.
- 9A.76.080 Rendering criminal assistance in the second degree.
- 9A.76.090 Rendering criminal assistance in the third degree.
- 9A.76.100 Compounding.
- 9A.76.110 Escape in the first degree.
- 9A.76.115 Sexually violent predator escape.
- 9A.76.120 Escape in the second degree.
- 9A.76.130 Escape in the third degree.
- 9A.76.140 Introducing contraband in the first degree.
- 9A.76.150 Introducing contraband in the second degree.
- 9A.76.160 Introducing contraband in the third degree.
- 9A.76.170 Bail jumping.
- 9A.76.175 Making a false or misleading statement to a public servant.
- 9A.76.177 Amber alert—Making a false or misleading statement to a public servant.
- 9A.76.180 Intimidating a public servant.
- 9A.76.200 Harming a police dog, accelerant detection dog, or police horse—Penalty.
- 9A.76.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Withholding knowledge of felony: RCW 9.69.100.

9A.76.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court;

(2) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: PROVIDED, That custody pursuant to chapter 13.34 RCW and RCW *74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this chapter;

(3) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program;

(4) "Uncontrollable circumstances" means an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or an act of a human being such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and no time or opportunity to resort to the courts. [2009 c 549 § 1003; 2001 c 264 § 4; 1991 c 181 § 6; 1979 c 155 § 35; 1977 ex.s. c 291 § 53; 1975 1st ex.s. c 260 § 9A.76.010.]

Reviser's note: *(1) RCW 74.13.020 no longer refers to "custody."

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

9A.76.020 Obstructing a law enforcement officer. (1)

A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

(2) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.

(3) Obstructing a law enforcement officer is a gross misdemeanor. [2001 c 308 § 3. Prior: 1995 c 285 § 33; 1994 c 196 § 1; 1975 1st ex.s. c 260 § 9A.76.020.]

Purpose—Effective date—2001 c 308: See notes following RCW 9A.76.175.

Additional notes found at www.leg.wa.gov

9A.76.023 Disarming a law enforcement or corrections officer. (1)

A person is guilty of disarming a law enforcement officer if with intent to interfere with the performance of the officer's duties the person knowingly removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer's duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

(2)(a) Except as provided in (b) of this subsection, disarming a law enforcement or corrections officer is a class C felony.

(b) Disarming a law enforcement or corrections officer is a class B felony if the firearm involved is discharged when the person removes the firearm. [2003 c 53 § 82; 1998 c 252 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.76.025 Disarming a law enforcement or corrections officer—Commission of another crime.

A person who commits another crime during the commission of the crime of disarming a law enforcement or corrections officer may be punished for the other crime as well as for disarming a law enforcement officer and may be prosecuted separately for each crime. [1998 c 252 § 2.]

9A.76.027 Law enforcement or corrections officer engaged in criminal conduct.

RCW 9A.76.023 and 9A.76.025 do not apply when the law enforcement officer or corrections officer is engaged in criminal conduct. [1998 c 252 § 3.]

9A.76.030 Refusing to summon aid for a peace officer. (1)

A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he or she knows to be a peace officer, he or she unreasonably refuses or fails to summon aid for such peace officer.

(2) Refusing to summon aid for a peace officer is a misdemeanor. [2011 c 336 § 398; 1975 1st ex.s. c 260 § 9A.76.030.]

9A.76.040 Resisting arrest. (1) A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her.

(2) Resisting arrest is a misdemeanor. [2011 c 336 § 399; 1975 1st ex.s. c 260 § 9A.76.040.]

9A.76.050 Rendering criminal assistance—Definition of term. As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he or she:

(1) Harbors or conceals such person; or

(2) Warns such person of impending discovery or apprehension; or

(3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or

(5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or

(6) Provides such person with a weapon. [2011 c 336 § 400; 1982 1st ex.s. c 47 § 20; 1975 1st ex.s. c 260 § 9A.76.050.]

Additional notes found at www.leg.wa.gov

9A.76.060 Relative defined. As used in RCW 9A.76.070 and 9A.76.080, "relative" means a person:

(1) Who is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, stepchild or step-parent to the person to whom criminal assistance is rendered; and

(2) Who does not render criminal assistance to another person in one or more of the means defined in subsections (4), (5), or (6) of RCW 9A.76.050. [1975 1st ex.s. c 260 § 9A.76.060.]

9A.76.070 Rendering criminal assistance in the first degree. (1) A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the first degree is a class B felony.

(b) Rendering criminal assistance in the first degree is a gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060 and under the age of eighteen at the time of the offense. [2010 c 255 § 1; 2003 c 53 § 83; 1982 1st ex.s. c 47 § 21; 1975 1st ex.s. c 260 § 9A.76.070.]

Short title—2010 c 255: "This act may be known and cited as Randy's law." [2010 c 255 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9A.76.080 Rendering criminal assistance in the second degree. (1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the second degree is a gross misdemeanor.

(b) Rendering criminal assistance in the second degree is a misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060. [2003 c 53 § 84; 1982 1st ex.s. c 47 § 22; 1975 1st ex.s. c 260 § 9A.76.080.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9A.76.090 Rendering criminal assistance in the third degree. (1) A person is guilty of rendering criminal assistance in the third degree if he or she renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor.

(2) Rendering criminal assistance in the third degree is a misdemeanor. [2011 c 336 § 401; 1975 1st ex.s. c 260 § 9A.76.090.]

9A.76.100 Compounding. (1) A person is guilty of compounding if:

(a) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will refrain from initiating a prosecution for a crime; or

(b) He or she confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

(2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a gross misdemeanor. [2011 c 336 § 402; 1975 1st ex.s. c 260 § 9A.76.100.]

9A.76.110 Escape in the first degree. (1) A person is guilty of escape in the first degree if he or she knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a felony or an equivalent juvenile offense.

(2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.

(3) Escape in the first degree is a class B felony. [2001 c 264 § 1; 1982 1st ex.s. c 47 § 23; 1975 1st ex.s. c 260 § 9A.76.110.]

Term of escaped prisoner recaptured: RCW 9.31.090.

Additional notes found at www.leg.wa.gov

9A.76.115 Sexually violent predator escape. (1) A person is guilty of sexually violent predator escape if:

(a) Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

(b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the state of Washington without prior court authorization; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.

(2) Sexually violent predator escape is a class A felony with a minimum sentence of sixty months, and shall be sentenced under RCW 9.94A.507. [2009 c 28 § 32; 2001 2nd sp.s. c 12 § 360; 2001 c 287 § 1.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9A.76.120 Escape in the second degree. (1) A person is guilty of escape in the second degree if:

(a) He or she knowingly escapes from a detention facility; or

(b) Having been charged with a felony or an equivalent juvenile offense, he or she knowingly escapes from custody; or

(c) Having been committed under chapter 10.77 RCW for a sex, violent, or felony harassment offense and being under an order of conditional release, he or she knowingly leaves or remains absent from the state of Washington without prior court authorization.

(2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.

(3) Escape in the second degree is a class C felony. [2001 c 287 § 2; 2001 c 264 § 2; 1995 c 216 § 15; 1982 1st ex.s. c 47 § 24; 1975 1st ex.s. c 260 § 9A.76.120.]

Reviser's note: This section was amended by 2001 c 264 § 2 and by 2001 c 287 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Term of escaped prisoner recaptured: RCW 9.31.090.

Additional notes found at www.leg.wa.gov

(2012 Ed.)

9A.76.130 Escape in the third degree. (1) A person is guilty of escape in the third degree if he or she escapes from custody.

(2) Escape in the third degree is a gross misdemeanor. [2011 c 336 § 403; 1975 1st ex.s. c 260 § 9A.76.130.]

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.140 Introducing contraband in the first degree. (1) A person is guilty of introducing contraband in the first degree if he or she knowingly provides any deadly weapon to any person confined in a detention facility.

(2) Introducing contraband in the first degree is a class B felony. [2011 c 336 § 404; 1975 1st ex.s. c 260 § 9A.76.140.]

9A.76.150 Introducing contraband in the second degree. (1) A person is guilty of introducing contraband in the second degree if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility with the intent that such contraband be of assistance in an escape or in the commission of a crime.

(2) Introducing contraband in the second degree is a class C felony. [2011 c 336 § 405; 1975 1st ex.s. c 260 § 9A.76.150.]

9A.76.160 Introducing contraband in the third degree. (1) A person is guilty of introducing contraband in the third degree if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility.

(2) Introducing contraband in the third degree is a misdemeanor. [2011 c 336 § 406; 1975 1st ex.s. c 260 § 9A.76.160.]

9A.76.170 Bail jumping. (1) Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

(2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(3) Bail jumping is:

(a) A class A felony if the person was held for, charged with, or convicted of murder in the first degree;

(b) A class B felony if the person was held for, charged with, or convicted of a class A felony other than murder in the first degree;

(c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony;

(d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor. [2001 c 264 § 3; 1983 1st ex.s. c 4 § 3; 1975 1st ex.s. c 260 § 9A.76.170.]

Additional notes found at www.leg.wa.gov

9A.76.175 Making a false or misleading statement to a public servant. A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. [2001 c 308 § 2. Prior: 1995 c 285 § 32.]

Purpose—2001 c 308: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting, without changes, the law prohibiting materially false or misleading statements to public servants, enacted as sections 32 and 33, chapter 285, Laws of 1995." [2001 c 308 § 1.]

Additional notes found at www.leg.wa.gov

9A.76.177 Amber alert—Making a false or misleading statement to a public servant. (1) A person who, with the intent of causing an activation of the voluntary broadcast notification system commonly known as the "Amber alert," or as the same system may otherwise be known, which is used to notify the public of abducted children, knowingly makes a false or misleading material statement to a public servant that a child has been abducted and which statement causes an activation, is guilty of a class C felony.

(2) "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. [2008 c 91 § 1.]

9A.76.180 Intimidating a public servant. (1) A person is guilty of intimidating a public servant if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

(2) For purposes of this section "public servant" shall not include jurors.

(3) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110.

(4) Intimidating a public servant is a class B felony. [2011 c 336 § 407; 1975 1st ex.s. c 260 § 9A.76.180.]

9A.76.200 Harming a police dog, accelerant detection dog, or police horse—Penalty. (1) A person is guilty of harming a police dog, accelerant detection dog, or police horse, if he or she maliciously injures, disables, shoots, or kills by any means any dog or horse that the person knows or has reason to know to be a police dog or accelerant detection dog, as defined in RCW 4.24.410, or police horse, as defined in subsection (2) of this section, whether or not the dog or horse is actually engaged in police or accelerant detection work at the time of the injury.

(2) "Police horse" means any horse used or kept for use by a law enforcement officer in discharging any legal duty or power of his or her office.

(3) Harming a police dog, accelerant detection dog, or police horse is a class C felony.

(4)(a) In addition to the criminal penalty provided in this section for harming a police dog:

(i) The court may impose a civil penalty of up to five thousand dollars for harming a police dog.

(ii) The court shall impose a civil penalty of at least five thousand dollars and may increase the penalty up to a maximum of ten thousand dollars for killing a police dog.

(b) Moneys collected must be distributed to the jurisdiction that owns the police dog. [2012 c 94 § 2; 2003 c 269 § 1; 1993 c 180 § 2; 1989 c 26 § 2; 1982 c 22 § 2.]

9A.76.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 25.]

Chapter 9A.80 RCW ABUSE OF OFFICE

Sections

9A.80.010 Official misconduct.

9A.80.010 Official misconduct. (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He or she intentionally commits an unauthorized act under color of law; or

(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

(2) Official misconduct is a gross misdemeanor. [2011 c 336 § 408; 1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 § 9A.80.010.]

Failure of duty by public officers: RCW 42.20.100.

Additional notes found at www.leg.wa.gov

Chapter 9A.82 RCW CRIMINAL PROFITEERING ACT (Formerly: Racketeering)

Sections

9A.82.001 Short title.
9A.82.010 Definitions.
9A.82.020 Extortionate extension of credit.
9A.82.030 Advancing money or property to be used for extortionate credit.
9A.82.040 Use of extortionate means to collect extensions of credit.
9A.82.045 Collection of unlawful debt.
9A.82.050 Trafficking in stolen property in the first degree.
9A.82.055 Trafficking in stolen property in the second degree.
9A.82.060 Leading organized crime.
9A.82.070 Influencing outcome of sporting event.
9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt.
9A.82.085 Bars on certain prosecutions.
9A.82.090 Orders restraining criminal profiteering—When issued.
9A.82.100 Remedies and procedures.
9A.82.110 County antiprofitteering revolving funds.

9A.82.120	Criminal profiteering lien—Authority, procedures.
9A.82.130	Criminal profiteering lien—Trustee of real property.
9A.82.140	Criminal profiteering lien—Procedures after notice.
9A.82.150	Criminal profiteering lien—Conveyance of property by trustee, liability.
9A.82.160	Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien.
9A.82.170	Financial institution records—Inspection and copying—Wrongful disclosure.
9A.82.900	Severability—1984 c 270.
9A.82.901	Effective date—1984 c 270 as amended by 1985 c 455.
9A.82.902	Effective date—1985 c 455.
9A.82.904	Severability—1985 c 455.

Special narcotics enforcement unit: RCW 43.43.655.

9A.82.001 Short title. This chapter shall be known as the criminal profiteering act. [2001 c 222 § 2. Prior: 1985 c 455 § 1.]

Purpose—2001 c 222: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting, without substantive changes, the Washington laws relating to criminal profiteering, and the sentencing level ranking for criminal profiteering crimes as they existed prior to December 21, 2000." [2001 c 222 § 1.]

Additional notes found at www.leg.wa.gov

9A.82.010 Definitions. Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;

(m) Extortionate extension of credit, as defined in RCW 9A.82.020;

(n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(p) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(r) Trafficking in stolen property, as defined in RCW 9A.82.050;

(s) Leading organized crime, as defined in RCW 9A.82.060;

(t) Money laundering, as defined in RCW 9A.83.020;

(u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(w) Promoting pornography, as defined in RCW 9.68.140;

(x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(cc) A pattern of equity skimming, as defined in RCW 61.34.020;

(dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);

(ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

(ff) Unlawful practice of law, as defined in RCW 2.48.180;

(gg) Commercial bribery, as defined in RCW 9A.68.060;

(hh) Health care false claims, as defined in RCW 48.80.030;

(ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);

(jj) Improperly obtaining financial information, as defined in RCW 9.35.010;

(kk) Identity theft, as defined in RCW 9.35.020;

(ll) Unlawful shipment of cigarettes in violation of *RCW 70.155.105(6) (a) or (b);

(mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2);

(nn) Unauthorized sale or procurement of telephone records in violation of RCW 9.26A.140;

(oo) Theft with the intent to resell, as defined in RCW 9A.56.340;

(pp) Organized retail theft, as defined in RCW 9A.56.350;

(qq) Mortgage fraud, as defined in RCW 19.144.080;

(rr) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100; or

(ss) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101.

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury. [2012 c 139 § 1; 2008 c 108 § 24. Prior: 2006 c 277 § 5; 2006 c 193 § 2; prior: 2003 c 119 § 6; 2003 c 113 § 3; 2003 c 53 § 85; prior: 2001 c 222 § 3; 2001 c 217 § 11; prior: 1999 c 143 § 40; prior: 1995 c 285 § 34; 1995 c 92 § 5; 1994 c 218 § 17; prior: 1992 c 210 § 6; 1992 c 145 § 13; 1989 c 20 § 17; 1988 c 33 § 5; 1986 c 78 § 1; 1985 c 455 § 2; 1984 c 270 § 1.]

*Reviser's note: RCW 70.155.105 was repealed by 2009 c 278 § 3.

Findings—2008 c 108: See RCW 19.144.005.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Additional notes found at www.leg.wa.gov

9A.82.020 Extortionate extension of credit. (1) A person who knowingly makes an extortionate extension of credit is guilty of a class B felony.

(2) In a prosecution under this section, if it is shown that all of the following factors are present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

(a) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable at the time the extension of credit was made through civil judicial processes against the debtor in the county in which the debtor, if a natural person, resided or in every county in which the debtor, if other than a natural person, was incorporated or qualified to do business.

(b) The extension of credit was made at a rate of interest in excess of an annual rate of forty-five percent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(c) The creditor intended the debtor to believe that failure to comply with the terms of the extension of credit would be enforced by extortionate means.

(d) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars. [2001 c 222 § 4. Prior: 1985 c 455 § 3; 1984 c 270 § 2.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.030 Advancing money or property to be used for extortionate credit. A person who advances money or property, whether as a gift, loan, investment, or pursuant to a partnership or profit-sharing agreement or otherwise, to any person, with the knowledge that it is the intention of that per-

(2012 Ed.)

son to use the money or property so advanced, directly or indirectly, for the purpose of making extortionate extensions of credit, is guilty of a class B felony. [2001 c 222 § 5. Prior: 1985 c 455 § 4; 1984 c 270 § 3.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.040 Use of extortionate means to collect extensions of credit. A person who knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extensions of credit or to punish any person for the nonrepayment thereof, is guilty of a class B felony. [2001 c 222 § 6. Prior: 1985 c 455 § 5; 1984 c 270 § 4.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.045 Collection of unlawful debt. It is unlawful for any person knowingly to collect any unlawful debt. A violation of this section is a class C felony. [2001 c 222 § 7. Prior: 1985 c 455 § 6.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.050 Trafficking in stolen property in the first degree. (1) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

(2) Trafficking in stolen property in the first degree is a class B felony. [2003 c 53 § 86; 2001 c 222 § 8. Prior: 1984 c 270 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.055 Trafficking in stolen property in the second degree. (1) A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.

(2) Trafficking in stolen property in the second degree is a class C felony. [2003 c 53 § 87.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.82.060 Leading organized crime. (1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity.

(2)(a) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony.

(b) Leading organized crime as defined in subsection (1)(b) of this section is a class B felony. [2003 c 53 § 88; 2001 c 222 § 9. Prior: 1985 c 455 § 7; 1984 c 270 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.070 Influencing outcome of sporting event.

Whoever knowingly gives, promises, or offers to any professional or amateur baseball, football, hockey, polo, tennis, horse race, or basketball player or boxer or any player or referee or other official who participates or expects to participate in any professional or amateur game or sport, or to any manager, coach, or trainer of any team or participant or prospective participant in any such game, contest, or sport, any benefit with intent to influence the person to lose or try to lose or cause to be lost or to limit the person's or person's team's margin of victory or defeat, or in the case of a referee or other official to affect the decisions or the performance of the official's duties in any way, in a baseball, football, hockey, or basketball game, boxing, tennis, horse race, or polo match, or any professional or amateur sport or game, in which the player or participant or referee or other official is taking part or expects to take part, or has any duty or connection therewith, is guilty of a class C felony. [2001 c 222 § 10. Prior: 1984 c 270 § 7.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt.

(1)(a) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A violation of this subsection is a class B felony.

(2)(a) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(b) A violation of this subsection is a class B felony.

(3)(a) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

(b) A violation of this subsection is a class C felony. [2003 c 53 § 89; 2001 c 222 § 11. Prior: 1985 c 455 § 8; 1984 c 270 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.085 Bars on certain prosecutions. In a criminal prosecution alleging a violation of RCW 9A.82.060 or 9A.82.080, the state is barred from joining any offense other than the offenses alleged to be part of the pattern of criminal profiteering activity. When a defendant has been tried criminally for a violation of RCW 9A.82.060 or 9A.82.080, the state is barred from subsequently charging the defendant with an offense that was alleged to be part of the pattern of criminal profiteering activity for which he or she was tried. [2001 c 222 § 12. Prior: 1985 c 455 § 9.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.090 Orders restraining criminal profiteering—When issued. During the pendency of any criminal case charging a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100. [2003 c 267 § 5; 2001 c 222 § 13. Prior: 1985 c 455 § 10; 1984 c 270 § 9.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.100 Remedies and procedures. (1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity, or by an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursu-

ant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering, or by an offense defined in RCW 9A.40.100, then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or anti-profitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or anti-profitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in RCW 9A.40.100, within three years after the final disposition of any criminal charges relating to the offense, whichever is later.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section

shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1)(a) and (b)(i) of this section, either party has the right to a jury trial. [2012 c 139 § 2; 2003 c 267 § 6; 2001 c 222 § 14. Prior: 1989 c 271 § 111; 1985 c 455 § 11; 1984 c 270 § 10.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Additional notes found at www.leg.wa.gov

9A.82.110 County antiprofitereing revolving funds.

(1) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the crime victims' compensation account provided in RCW 7.68.045.

(2)(a) The county legislative authority may establish an antiprofitereing revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from

the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the crime victims' compensation account provided in RCW 7.68.045.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitereing revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitereing revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund. [2010 c 122 § 4; 2009 c 479 § 11; 2001 c 222 § 15. Prior: 1985 c 455 § 12; 1984 c 270 § 11.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.120 Criminal profiteering lien—Authority, procedures. (1) The state, upon filing a criminal action under RCW 9A.82.060 or 9A.82.080 or for an offense defined in RCW 9A.40.100, or a civil action under RCW 9A.82.100, may file in accordance with this section a criminal profiteering lien. A filing fee or other charge is not required for filing a criminal profiteering lien.

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:

(a) The name of the defendant whose property or other interests are to be subject to the lien;

(b) In the discretion of the attorney general or county prosecuting attorney filing the lien, any aliases or fictitious names of the defendant named in the lien;

(c) If known to the attorney general or county prosecuting attorney filing the lien, the present residence or principal place of business of the person named in the lien;

(d) A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding;

(e) The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed;

(f) A statement that the notice is being filed pursuant to this section;

(g) The amount that the state claims in the action or, with respect to property or other interests that the state has

requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited;

(h) If known to the attorney general or county prosecuting attorney filing the lien, a description of property that is subject to forfeiture to the state or property in which the defendant has an interest that is available to satisfy a judgment entered in favor of the state; and

(i) Such other information as the attorney general or county prosecuting attorney filing the lien deems appropriate.

(3) The attorney general or the county prosecuting attorney filing the lien may amend a lien filed under this section at any time by filing an amended criminal profiteering lien in accordance with this section that identifies the prior lien amended.

(4) The attorney general or the county prosecuting attorney filing the lien shall, as soon as practical after filing a criminal profiteering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a criminal profiteering lien filed in accordance with this section.

(5)(a) A criminal profiteering lien is perfected against interests in personal property in the same manner as a security interest in like property pursuant to RCW 62A.9A-301 through 62A.9A-316 or as otherwise required to perfect a security interest in like property under applicable law. In the case of perfection by filing, the state shall file, in lieu of a financing statement in the form prescribed by RCW 62A.9A-502, a notice of lien in substantially the following form:

NOTICE OF LIEN

Pursuant to RCW 9A.82.120, the state of Washington claims a criminal profiteering lien on all real and personal property of:

Name:

Address:

.....

State of Washington

.....

By (authorized signature)

On receipt of such a notice from the state, a filing officer shall, without payment of filing fee, file and index the notice as if it were a financing statement naming the state as secured party and the defendant as debtor.

(b) A criminal profiteering lien is perfected against interests in real property by filing the lien in the office where a mortgage on the real estate would be filed or recorded. The filing officer shall file and index the criminal profiteering lien, without payment of a filing fee, in the same manner as a mortgage.

(6) The filing of a criminal profiteering lien in accordance with this section creates a lien in favor of the state in:

(a) Any interest of the defendant, in real property situated in the county in which the lien is filed, then maintained, or thereafter acquired in the name of the defendant identified in the lien;

(b) Any interest of the defendant, in personal property situated in this state, then maintained or thereafter acquired in the name of the defendant identified in the lien; and

(c) Any property identified in the lien to the extent of the defendant's interest therein.

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person who, in the ordinary course of his or her business, furnishes labor, services, or materials, or rents, leases, or otherwise supplies equipment, without knowledge of the criminal profiteering lien, is superior to the criminal profiteering lien.

(8) Upon entry of judgment in favor of the state, the state may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to such other notice as is required by law, give at least thirty days' notice of the execution to any person possessing at the time the notice is given, an interest recorded subsequent to the date the state's lien was perfected.

(9) Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

(a) In the case of real property or a beneficial interest in real property, relates back to the date of filing the criminal profiteering lien or, if no criminal profiteering lien is filed, then to the date of recording of the final judgment or the abstract thereof; or

(b) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a criminal profiteering lien in accordance with this section, whichever is earlier, but if the property was not seized and no criminal profiteering lien was filed then to the date the final judgment was filed with the department of licensing and, if the personal property is an aircraft, with the federal aviation administration.

(10) This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under RCW 9A.82.100 or appropriate to protect the interests of the state or available under other applicable law.

(11) In a civil or criminal action under this chapter, the superior court shall provide for the protection of bona fide interests in property, including community property, subject to liens of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f). [2003 c 267 § 7; 2001 c 222 § 16. Prior: 1985 c 455 § 13; 1984 c 270 § 12.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.130 Criminal profiteering lien—Trustee of real property. (1) A trustee who is personally served in the manner provided for service of legal process with written notice that a lien notice has been recorded or a civil proceeding or criminal proceeding has been instituted under this

chapter against any person for whom the trustee holds legal or record title to real property, shall immediately furnish to the attorney general or county prosecuting attorney the following:

(a) The name and address of the person, as known to the trustee;

(b) To the extent known to the trustee, the name and address of all other persons for whose benefit the trustee holds title to the real property; and

(c) If requested by the attorney general or county prosecuting attorney, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(2) The recording of a lien notice shall not constitute a lien on the record title to real property owned by a trustee at the time of recording except to the extent that trustee is named in and served with the lien notice as provided in subsection (1) of this section. The attorney general or county prosecuting attorney may bring a civil proceeding in superior court against the trustee to recover from the trustee the amounts set forth in RCW 9A.82.150. In addition to amounts recovered under RCW 9A.82.150, the attorney general or county prosecuting attorney also may recover its investigative costs and attorneys' fees.

(3) The recording of a lien notice does not affect the use to which real property or a beneficial interest owned by the person named in the lien notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership except the sale of the property, until a judgment of forfeiture is entered.

(4) This section does not apply to any conveyance by a trustee under a court order unless the court order is entered in an action between the trustee and the beneficiary.

(5) Notwithstanding that a trustee is served with notice as provided in subsection (1) of this section, this section does not apply to a conveyance by a trustee required under the terms of any trust agreement in effect before service of such notice on the trustee. [2001 c 222 § 17. Prior: 1985 c 455 § 14; 1984 c 270 § 13.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.140 Criminal profiteering lien—Procedures after notice. (1) The term of a lien notice shall be six years from the date the lien notice is recorded. If a renewal lien notice is filed by the attorney general or county prosecuting attorney, the term of the renewal lien notice shall be for six years from the date the renewal lien notice is recorded. The attorney general or county prosecuting attorney is entitled to only one renewal of the lien notice.

(2) The attorney general or county prosecuting attorney filing the lien notice may release in whole or in part any lien notice or may release any specific property or beneficial interest from the lien notice upon such terms and conditions as the attorney general or county prosecuting attorney considers appropriate and shall release any lien upon the dismissal of the action which is the basis of the lien or satisfaction of the judgment of the court in the action or other final disposition of the claim evidenced by the lien. A release of a lien notice executed by the attorney general or county prosecuting attorney shall be recorded in the official records in which the

lien notice covering that property was recorded. No charge or fee may be imposed for recording any release of a lien notice.

(3)(a) A person named in the lien notice may move the court in which the civil proceeding giving rise to the lien notice is pending for an order extinguishing the lien notice.

(b) Upon the motion of a person under (a) of this subsection, the court immediately shall enter an order setting a date for hearing, which shall be not less than five nor more than ten days after the motion is filed. The order and a copy of the motion shall be served on the attorney general or county prosecuting attorney within three days after the entry of the court's order. At the hearing, the court shall take evidence on the issue of whether any property or beneficial interest owned by the person is covered by the lien notice or otherwise subject to forfeiture under RCW 9A.82.120. If the person shows by a preponderance of the evidence that the lien notice is not applicable to the person or that any property or beneficial interest owned by the person is not subject to forfeiture under RCW 9A.82.120, the court shall enter a judgment extinguishing the lien notice or releasing the property or beneficial interest from the lien notice.

(c) The court may enter an order releasing from the lien notice any specific real property or beneficial interest if, at the time the lien notice is recorded, there is pending an arms length sale of the real property or beneficial interest in which the parties are under no undue compulsion to sell or buy and are able, willing, and reasonably well informed and the sale is for the fair market value of the real property or beneficial interest and the recording of the lien notice prevents the sale of the property or interest. The proceeds resulting from the sale of the real property or beneficial interest shall be deposited with the court, subject to the further order of the court.

(d) At any time after filing of a lien, the court may release from the lien any property upon application by the defendant and posting of security equal to the value of the property to be released. [2001 c 222 § 18. Prior: 1985 c 455 § 15; 1984 c 270 § 14.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.150 Criminal profiteering lien—Conveyance of property by trustee, liability. (1) If a trustee conveys title to real property for which, at the time of the conveyance, the trustee has been personally served with notice as provided in RCW 9A.82.130(1) of a lien under this chapter, the trustee shall be liable to the state for the greater of:

(a) The amount of proceeds received by the person named in the lien notice as a result of the conveyance;

(b) The amount of proceeds received by the trustee as a result of the conveyance and distributed by the trustee to the person named in the lien notice; or

(c) The fair market value of the interest of the person named in the lien notice in the real property so conveyed.

(2) If the trustee conveys the real property for which a lien notice has been served on the trustee at the time of the conveyance and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or beneficiary's designee, the trustee's liability shall not exceed the amount of the proceeds so held so long as the trustee continues to hold the proceeds. [2001 c 222 § 19. Prior: 1985 c 455 § 16; 1984 c 270 § 15.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.160 Criminal profiteering lien—Trustee’s failure to comply, evasion of procedures or lien. (1) A trustee who knowingly fails to comply with RCW 9A.82.130(1) is guilty of a gross misdemeanor.

(2) A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) with the intent to evade the provisions of RCW 9A.82.100 or 9A.82.120 with respect to such property is guilty of a class C felony. [2003 c 53 § 90; 2001 c 222 § 20. Prior: 1985 c 455 § 17; 1984 c 270 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.170 Financial institution records—Inspection and copying—Wrongful disclosure. (1) Upon request of the attorney general or prosecuting attorney, a subpoena for the production of records of a financial institution may be signed and issued by a superior court judge if there is reason to believe that an act of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appears reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the financial institution as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(2) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an officer of the financial institution as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(3) Except as provided in this subsection, a financial institution served with a subpoena under this section shall not disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A judge of the superior court may order the attorney general, prosecuting attorney, or financial institution to advise the financial institution’s customer of the subpoena. Unless ordered to do so by the court, disclosure of the subpoena by the financial institution or any of its employees to the customer is a misdemeanor.

(4) A financial institution shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to this section.

(5) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(6) Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

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(7) Upon filing of any civil or criminal action, the non-disclosure requirements of any subpoena or order under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide to the defendant copies of all subpoenas or other orders issued under this section.

(8) A financial institution shall not be civilly liable for harm resulting from its compliance with the provisions of this chapter. [2001 c 222 § 21. Prior: 1985 c 455 § 18; 1984 c 270 § 17.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.900 Severability—1984 c 270. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 222 § 22. Prior: 1984 c 270 § 20.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.901 Effective date—1984 c 270 as amended by 1985 c 455. Sections 12, 13, 14, 15, and 16, chapter 270, Laws of 1984 as amended by sections 13, 14, 15, 16, and 17 of this 1985 act shall take effect on July 1, 1986, and the remainder of chapter 270, Laws of 1984 shall take effect on July 1, 1985. [2001 c 222 § 23. Prior: 1985 c 455 § 20; 1984 c 270 § 21.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.902 Effective date—1985 c 455. With the exception of sections 13, 14, 15, 16, and 17 of this act, this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. [1985 c 455 § 21.]

9A.82.904 Severability—1985 c 455. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 455 § 23.]

Chapter 9A.83 RCW MONEY LAUNDERING

Sections

9A.83.010	Definitions.
9A.83.020	Money laundering.
9A.83.030	Seizure and forfeiture.
9A.83.040	Release from liability.

9A.83.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Conducts a financial transaction" includes initiating, concluding, or participating in a financial transaction.

(2) "Financial institution" means a bank, savings bank, credit union, or savings and loan institution.

(3) "Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, transmission, delivery, trade, deposit, withdrawal, payment, transfer between accounts, exchange

of currency, extension of credit, or any other acquisition or disposition of property, by whatever means effected.

(4) "Knows the property is proceeds of specified unlawful activity" means believing based upon the representation of a law enforcement officer or his or her agent, or knowing that the property is proceeds from some form, though not necessarily which form, of specified unlawful activity.

(5) "Proceeds" means any interest in property directly or indirectly acquired through or derived from an act or omission, and any fruits of this interest, in whatever form.

(6) "Property" means anything of value, whether real or personal, tangible or intangible.

(7) "Specified unlawful activity" means an offense committed in this state that is a class A or B felony under Washington law or that is listed as "criminal profiteering" in RCW 9A.82.010, or an offense committed in any other state that is punishable under the laws of that state by more than one year in prison, or an offense that is punishable under federal law by more than one year in prison. [1999 c 143 § 41; 1992 c 210 § 1.]

9A.83.020 Money laundering. (1) A person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and:

(a) Knows the property is proceeds of specified unlawful activity; or

(b) Knows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity; or

(c) Knows that the transaction is designed in whole or in part to avoid a transaction reporting requirement under federal law.

(2) In consideration of the constitutional right to counsel afforded by the Fifth and Sixth amendments to the United States Constitution and Article 1, Section 22 of the Constitution of Washington, an additional proof requirement is imposed when a case involves a licensed attorney who accepts a fee for representing a client in an actual criminal investigation or proceeding. In these situations, the prosecution is required to prove that the attorney accepted proceeds of specified unlawful activity with intent:

(a) To conceal or disguise the nature, location, source, ownership, or control of the proceeds, knowing the property is proceeds of specified unlawful activity; or

(b) To avoid a transaction reporting requirement under federal law.

The proof required by this subsection is in addition to the requirements contained in subsection (1) of this section.

(3) An additional proof requirement is imposed when a case involves a financial institution and one or more of its employees. In these situations, the prosecution is required to prove that proceeds of specified unlawful activity were accepted with intent:

(a) To conceal or disguised [disguise] the nature, location, source, ownership, or control of the proceeds, knowing the property is proceeds of specified unlawful activity; or

(b) To avoid a transaction reporting requirement under federal law.

The proof required by this subsection is in addition to the requirements contained in subsection (1) of this section.

(4) Money laundering is a class B felony.

(5) A person who violates this section is also liable for a civil penalty of twice the value of the proceeds involved in the financial transaction and for the costs of the suit, including reasonable investigative and attorneys' fees.

(6) Proceedings under this chapter shall be in addition to any other criminal penalties, civil penalties, or forfeitures authorized under state law. [1992 c 210 § 2.]

9A.83.030 Seizure and forfeiture. (1) Proceeds traceable to or derived from specified unlawful activity or a violation of RCW 9A.83.020 are subject to seizure and forfeiture. The attorney general or county prosecuting attorney may file a civil action for the forfeiture of proceeds. Unless otherwise provided for under this section, no property rights exist in these proceeds. All right, title, and interest in the proceeds shall vest in the governmental entity of which the seizing law enforcement agency is a part upon commission of the act or omission giving rise to forfeiture under this section.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by a superior court that has jurisdiction over the property. Any agency seizing real property shall file a lis pendens concerning the property. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later. Real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant issued pursuant to RCW 69.50.502; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter.

(3) A seizure under subsection (2) of this section commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized proceeds to be served within fifteen days after the seizure on the owner of the property seized and the person in charge thereof and any person who has a known right or interest therein, including a community property interest. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the property seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The provisions of RCW 69.50.505(5) shall apply to any such hearing. The seizing law enforcement agency shall promptly return property to the claimant upon the direction of the administrative law judge or court.

(6) Disposition of forfeited property shall be made in the manner provided for in RCW 69.50.505 (8) through (10) and (14). [2008 c 6 § 630; 2001 c 168 § 2; 1992 c 210 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

9A.83.040 Release from liability. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of his or her duties, or upon any person who reasonably believes that he or she is acting at the direction of such officer and that the officer is acting in the lawful performance of his or her duties. [2011 c 336 § 409; 1992 c 210 § 4.]

Chapter 9A.84 RCW PUBLIC DISTURBANCE

Sections

9A.84.010	Riot.
9A.84.020	Failure to disperse.
9A.84.030	Disorderly conduct.
9A.84.040	False reporting.

9A.84.010 Riot. (1) A person is guilty of the crime of riot if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2)(a) Except as provided in (b) of this subsection, the crime of riot is a gross misdemeanor.

(b) The crime of riot is a class C felony if the actor is armed with a deadly weapon. [2003 c 53 § 91; 1975 1st ex.s. c 260 § 9A.84.010.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.84.020 Failure to disperse. (1) A person is guilty of failure to disperse if:

(a) He or she congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and

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(b) He or she refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law.

(2) Failure to disperse is a misdemeanor. [2011 c 336 § 410; 1975 1st ex.s. c 260 § 9A.84.020.]

9A.84.030 Disorderly conduct. (1) A person is guilty of disorderly conduct if the person:

(a) Uses abusive language and thereby intentionally creates a risk of assault;

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or

(d)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:

(A) The location where a funeral or burial is being performed;

(B) A funeral home during the viewing of a deceased person;

(C) A funeral procession, if the person described in this subsection (1)(d) knows that the funeral procession is taking place; or

(D) A building in which a funeral or memorial service is being conducted; and

(ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

(2) Disorderly conduct is a misdemeanor. [2007 c 2 § 1; 1975 1st ex.s. c 260 § 9A.84.030.]

Effective date—2007 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 2, 2007]." [2007 c 2 § 2.]

9A.84.040 False reporting. (1) A person is guilty of false reporting if with knowledge that the information reported, conveyed, or circulated is false, he or she initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(2) False reporting is a gross misdemeanor. [2011 c 336 § 411; 1975 1st ex.s. c 260 § 9A.84.040.]

Chapter 9A.88 RCW INDECENT EXPOSURE—PROSTITUTION (Formerly: Public indecency—Prostitution)

Sections

9A.88.010	Indecent exposure.
9A.88.030	Prostitution.
9A.88.040	Prosecution for prostitution under RCW 9A.88.030—Affirmative defense.
9A.88.050	Prostitution—Sex of parties immaterial—No defense.
9A.88.060	Promoting prostitution—Definitions.
9A.88.070	Promoting prostitution in the first degree.
9A.88.080	Promoting prostitution in the second degree.
9A.88.085	Promoting travel for prostitution.
9A.88.090	Permitting prostitution.
9A.88.110	Patronizing a prostitute.
9A.88.120	Additional fee assessments.
9A.88.130	Additional requirements.

9A.88.140 Vehicle impoundment—Fees and fine.
9A.88.150 Seizure and forfeiture.

Obscenity: Chapter 9.68 RCW.

9A.88.010 Indecent exposure. (1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2)(a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor.

(b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years.

(c) Indecent exposure is a class C felony if the person has previously been convicted under this section or of a sex offense as defined in RCW 9.94A.030. [2003 c 53 § 92; 2001 c 88 § 2; 1990 c 3 § 904; 1987 c 277 § 1; 1975 1st ex.s. c 260 § 9A.88.010.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Acknowledgment—Declaration—Findings—2001 c 88: See note following RCW 43.70.640.

Additional notes found at www.leg.wa.gov

9A.88.030 Prostitution. (1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in chapter 9A.44 RCW.

(3) Prostitution is a misdemeanor. [1988 c 145 § 16; 1979 ex.s. c 244 § 15; 1975 1st ex.s. c 260 § 9A.88.030.]

Additional notes found at www.leg.wa.gov

9A.88.040 Prosecution for prostitution under RCW 9A.88.030—Affirmative defense. In any prosecution for prostitution under RCW 9A.88.030, it is an affirmative defense that the actor committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for trafficking, promoting prostitution in the first degree, or trafficking in persons shall create a presumption that the person's participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons. [2012 c 142 § 1.]

9A.88.050 Prostitution—Sex of parties immaterial—No defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

(1) Such persons were of the same sex; or

(2) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female. [1975 1st ex.s. c 260 § 9A.88.050.]

9A.88.060 Promoting prostitution—Definitions. The following definitions are applicable in RCW 9A.88.070 through 9A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity. [2011 c 336 § 412; 1975 1st ex.s. c 260 § 9A.88.060.]

9A.88.070 Promoting prostitution in the first degree.

(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution:

(a) By compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(b) By compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

(2) Promoting prostitution in the first degree is a class B felony. [2012 c 141 § 1; 2007 c 368 § 13; 1975 1st ex.s. c 260 § 9A.88.070.]

9A.88.080 Promoting prostitution in the second degree. (1) A person is guilty of promoting prostitution in the second degree if he or she knowingly:

(a) Profits from prostitution; or

(b) Advances prostitution.

(2) Promoting prostitution in the second degree is a class C felony. [2011 c 336 § 413; 1975 1st ex.s. c 260 § 9A.88.080.]

9A.88.085 Promoting travel for prostitution. (1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be patronizing a prostitute or promoting prostitution, if occurring in the state.

(2) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021.

(3) Promoting travel for prostitution is a class C felony. [2006 c 250 § 2.]

Finding—2006 c 250: "The legislature finds that the sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, including activities relating to prostitution, pornography, sex tourism, and other commercial sexual services. Prostitution and related activities contribute to the trafficking in persons, as does sex tourism. Therefore, discouraging sex tourism is key to reducing the demand for sex trafficking.

While prostitution is illegal in developing nations that are the primary destination of sex tourism, sex tourism is a major component of the local

economy. The laws target female workers rather than the male customers, and economic opportunities for females are limited. Developed nations create the demand for sex tourism, yet often fail to criminalize the practice, or the existing laws fail to specifically target the sellers of travel who organize, facilitate, and promote sex tourism." [2006 c 250 § 1.]

9A.88.090 Permitting prostitution. (1) A person is guilty of permitting prostitution if, having possession or control of premises which he or she knows are being used for prostitution purposes, he or she fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor. [2011 c 336 § 414; 1975 1st ex.s. c 260 § 9A.88.090.]

9A.88.110 Patronizing a prostitute. (1) A person is guilty of patronizing a prostitute if:

(a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or

(b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or

(c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

(2) For purposes of this section, "sexual conduct" has the meaning given in RCW 9A.88.030.

(3) Patronizing a prostitute is a misdemeanor. [1988 c 146 § 4.]

Additional notes found at www.leg.wa.gov

9A.88.120 Additional fee assessments. (1)(a) In addition to penalties set forth in RCW 9A.88.010 and 9A.88.030, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.010, 9A.88.030, or comparable county or municipal ordinances shall be assessed a fifty dollar fee.

(b) In addition to penalties set forth in RCW 9A.88.090, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.090 or comparable county or municipal ordinances shall be assessed a fee in the amount of:

(i) One thousand five hundred dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Two thousand five hundred dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Five thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(c) In addition to penalties set forth in RCW 9A.88.110, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.110 or a comparable county or municipal ordinance shall be assessed a fee in the amount of:

(i) One thousand five hundred dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Two thousand five hundred dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Five thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(d) In addition to penalties set forth in RCW 9A.88.070 and 9A.88.080, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal ordinances shall be assessed a fee in the amount of:

(i) Three thousand dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Six thousand dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Ten thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(2) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation under this chapter or comparable county or municipal ordinances, the court shall assess the fee as specified under subsection (1) of this section.

(3) The court shall not reduce, waive, or suspend payment of all or part of the assessed fee in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(4) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(5) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county, or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2012 c 134 § 3; 2007 c 368 § 12; 1995 c 353 § 13.]

9A.88.130 Additional requirements. (1) When sentencing or imposing conditions on a person convicted of, or receiving a deferred sentence or deferred prosecution for, violating RCW 9A.88.110 or 9.68A.100, the court must impose a requirement that the offender:

(a) Not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor;

(b) Remain outside the geographical area, prescribed by the court, in which the person was arrested for violating RCW 9A.88.110 or 9.68A.100, unless such a requirement would interfere with the person's legitimate employment or residence or otherwise be infeasible; and

(c) Fulfill the terms of a program, if a first-time offender, designated by the sentencing court, designed to educate offenders about the negative costs of prostitution.

(2) This requirement is in addition to the penalties set forth in RCW 9A.88.110, 9A.88.120, and 9.68A.100. [2012 c 136 § 2; 1999 c 327 § 2.]

Findings—Intent—1999 c 327: "The legislature finds that most law enforcement effort to prevent prostitution is directed at punishing prostitutes. The legislature also finds that many patrons of prostitutes use motor vehicles in order to obtain the services of prostitutes and that successful prevention of prostitution involves efforts to curtail the demand for services offered by prostitutes. It is the intent of the legislature to decrease the demand for prostitution services and thereby eliminate the economic foundation for the prostitution industry. It is also the intent of the legislature to eliminate traffic congestion and other concerns to neighborhoods and business areas caused by patrons cruising in motor vehicles in areas of high prostitution activity." [1999 c 327 § 1.]

9A.88.140 Vehicle impoundment—Fees and fine.

(1)(a) Upon an arrest for a suspected violation of patronizing a prostitute, promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, the arresting law enforcement officer may impound the person's vehicle if (i) the motor vehicle was used in the commission of the crime; (ii) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465; and (iii) either (A) the person arrested has previously been convicted of one of the offenses listed in this subsection or (B) the offense was committed within an area designated under (b) of this subsection.

(b) A local governing authority may designate areas within which vehicles are subject to impoundment under this section regardless of whether the person arrested has previously been convicted of any of the offenses listed in (a) of this subsection.

(i) The designation must be based on evidence indicating that the area has a disproportionately higher number of arrests for the offenses listed in (a) of this subsection as compared to other areas within the same jurisdiction.

(ii) The local governing authority shall post signs at the boundaries of the designated area to indicate that the area has been designated under this subsection.

(2) Upon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465.

(3) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW and the impoundment order must clearly state "prostitution hold."

(4)(a) Prior to redeeming the impounded vehicle, and in addition to all applicable impoundment, towing, and storage fees paid to the towing company under chapter 46.55 RCW, the owner of the impounded vehicle must pay a fine to the impounding agency. The fine shall be five hundred dollars for the offenses specified in subsection (1) of this section, or two thousand five hundred dollars for the offenses specified in subsection (2) of this section. The fine shall be deposited in the prostitution prevention and intervention account established under RCW 43.63A.740.

(b) Upon receipt of the fine paid under (a) of this subsection, the impounding agency shall issue a written receipt to the owner of the impounded vehicle.

(5)(a) In order to redeem a vehicle impounded under this section, the owner must provide the towing company with the written receipt issued under subsection (4)(b) of this section.

(b) The written receipt issued under subsection (4)(b) of this section authorizes the towing company to release the impounded vehicle upon payment of all impoundment, towing, and storage fees.

(c) A towing company that relies on a forged receipt to release a vehicle impounded under this section is not liable to the impounding authority for any unpaid fine under subsection (4)(a) of this section.

(6)(a) In any proceeding under chapter 46.55 RCW to contest the validity of an impoundment under this section where the claimant substantially prevails, the claimant is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (4) of this section.

(b) If the person is found not guilty at trial for a crime listed under subsection (1) of this section, the person is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the fine paid under subsection (4) of this section.

(c) All refunds made under this section shall be paid by the impounding agency.

(d) Prior to receiving any refund under this section, the claimant must provide proof of payment. [2010 c 289 § 12; 2009 c 387 § 1; 2007 c 368 § 8; 1999 c 327 § 3.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

9A.88.150 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) Any property or other interest acquired or maintained in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to

the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) When the owner of a conveyance has been arrested for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(c) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

(d) All proceeds traceable to or derived from an offense defined in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

(f) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission, which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, if a substantial nexus exists between the violation and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this section may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding; or

(c) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be

served by any method authorized by law or court rule including, but not limited to, service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter, the seizing law enforcement agency shall sell the property that is not required to be destroyed by law and that is not harmful to the public.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the prostitution prevention and intervention account under RCW 43.63A.740.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (11) of this section.

(c) The value of sold forfeited property is the sale price. The value of destroyed property and retained firearms or illegal property is zero.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(11) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (9) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence;

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section:

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty day period. Nothing in this section requires the claim to be paid by the end of the sixty day or thirty day period; and

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(12) The landlord's claim for damages under subsection (11) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (9) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (11) of this section.

(13) Subsections (11) and (12) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2012 c 140 § 1.]

proceedings which were begun before July 1, 1976. [1975 1st ex.s. c 260 § 9A.92.020.]

Chapter 9A.98 RCW LAWS REPEALED

Sections

9A.98.010 Acts or parts of acts repealed.

9A.98.020 Savings clause.

9A.98.010 Acts or parts of acts repealed. See 1975 1st ex.s. c 260 § 9A.92.010.

9A.98.020 Savings clause. The laws repealed by RCW 9A.98.010 are repealed except with respect to rights and duties which matured, penalties which were incurred, and

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Title 10

CRIMINAL PROCEDURE

Chapters

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- 10.05 Deferred prosecution—Courts of limited jurisdiction.
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Criminal justice training commission—Education and training boards: Chapter 43.101 RCW.

Criminal rules for superior court: Rules of court: Superior Court Criminal Rules (CrR).

Justice without unnecessary delay: State Constitution Art. 1 § 10.

Mental illness—Financial responsibility: Chapter 71.02 RCW.

Oaths and mode of administering: State Constitution Art. 1 § 6.

Traffic violations: Chapters 46.63, 46.64 RCW.

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Chapter 10.01 RCW GENERAL PROVISIONS

Sections

- 10.01.030 Pleadings—Forms abolished.
- 10.01.040 Statutes—Repeal or amendment—Saving clause presumed.
- 10.01.050 Convictions—Necessary before punishment.
- 10.01.060 Conviction—Requisites—Waiver of jury trial.
- 10.01.070 Corporations—Amenable to criminal process—How.
- 10.01.090 Corporations—Judgment against.
- 10.01.100 Corporations—Penalties—Fines in lieu of other punishments.
- 10.01.120 Pardons—Reprieves—Commutations.
- 10.01.130 Witnesses' fees.
- 10.01.140 Mileage allowance—Jurors—Witnesses.
- 10.01.150 Charges arising from official acts of state officers or employees—Defense by attorney general.
- 10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission—Medical or mental health treatment or services.
- 10.01.170 Fine or costs—Payment within specified time or installments.
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- 10.01.230 Victim impact panel registry—Panel minimum standards.

Alcoholics—Private establishment: Chapter 71.12 RCW.

Double jeopardy: State Constitution Art. 1 § 9.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

Habeas corpus: State Constitution Art. 1 § 13.

Indians, jurisdiction in criminal and civil causes: Chapter 37.12 RCW.

Limitation of actions: RCW 9A.04.080.

Mental illness: Chapter 71.05 RCW.

Psychopathic delinquents, procedures, hospitalization, etc.: Chapter 71.06 RCW.

Public defender: Chapter 36.26 RCW.

Right to

bail: State Constitution Art. 1 § 20.

trial by jury: State Constitution Art. 1 § 21.

Rights of accused persons: State Constitution Art. 1 § 22.

Sexual psychopaths, procedures as to: Chapter 71.06 RCW.

10.01.030 Pleadings—Forms abolished. All the forms of pleading in criminal actions heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein. [Code 1881 § 1002; 1873 p 224 § 185; 1869 p 240 § 180; RRS § 2022.]

10.01.040 Statutes—Repeal or amendment—Saving clause presumed. No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any pen-

alty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein. [1901 ex.s. c 6 § 1; RRS § 2006.]

10.01.050 Convictions—Necessary before punishment. No person charged with any offense against the law shall be punished for such offense, unless he or she shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person. [2010 c 8 § 1001; Code 1881 § 770; 1854 p 76 § 6; RRS § 2118.]

10.01.060 Conviction—Requisites—Waiver of jury trial. No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his or her plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court: PROVIDED HOWEVER, That except in capital cases, where the person informed against or indicted for a crime is represented by counsel, such person may, with the assent of the court, waive trial by jury and submit to trial by the court. [2010 c 8 § 1002; 1951 c 52 § 1; 1909 c 249 § 57; 1891 c 28 § 91; Code 1881 § 767; 1873 p 180 § 3; 1869 p 198 § 3; 1859 p 105 § 3; 1854 p 76 § 3; RRS § 2309.]

Self-incriminating testimony: State Constitution Art. 1 § 9.

10.01.070 Corporations—Amenable to criminal process—How. Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by the sheriff forthwith served and returned in the manner provided for service of summons upon such corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any district or municipal judge, a like summons, signed by such judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by the sheriff forthwith served as herein provided. [1987 c 202 § 147; 1911 c 29 § 1; RRS § 2011-1.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.01.090 Corporations—Judgment against. If the corporation shall be found guilty and a fine imposed, it shall

be entered and docketed by the clerk, or district or municipal court as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action. [1987 c 202 § 148; 1911 c 29 § 3; RRS § 2011-3.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.01.100 Corporations—Penalties—Fines in lieu of other punishments. Every corporation guilty of a violation of any law of the state of Washington, where the prescribed penalty is, for any reason, incapable of execution or enforcement against such corporation, shall be punished by a fine of not more than ten thousand dollars, if such offense is a felony; or, by a fine of not more than one thousand dollars if such offense is a gross misdemeanor; or, by a fine of not more than five hundred dollars if such offense is a misdemeanor. [1925 ex.s. c 101 § 1; RRS § 2011-4.]

10.01.120 Pardons—Reprieves—Commutations. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he or she may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he or she may think proper; and he or she may issue his or her warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he or she may think proper. [2010 c 8 § 1003; Code 1881 § 1136; 1854 p 128 § 174; RRS § 2223.]

Governor's powers: State Constitution Art. 3 §§ 9, 11.

Record of pardons, etc., governor to keep: RCW 43.06.020.

10.01.130 Witnesses' fees. No fees shall be allowed to witnesses in criminal causes unless they shall have reported their attendance at the close of each day's session to the clerk in attendance thereon. [1895 c 10 § 1; RRS § 498, part. FORMER PART OF SECTION: 1895 c 10 § 2; RRS § 498, part, now codified as RCW 10.01.140.]

Rules of court: Cf. CrR 6.12.

Witness fees: Chapters 2.40, 12.16 RCW.

10.01.140 Mileage allowance—Jurors—Witnesses. No allowance of mileage shall be made to a juror or witness who has not verified his or her claim of mileage under oath before the clerk of the court on which he or she is in attendance. [2010 c 8 § 1004; 1895 c 10 § 2; RRS § 498, part. Formerly RCW 10.01.130, part.]

10.01.150 Charges arising from official acts of state officers or employees—Defense by attorney general. Whenever a state officer or employee is charged with a criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney

general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: PROVIDED, HOWEVER, If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his or her actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the liability account. [2010 c 8 § 1005; 1999 c 163 § 6; 1975 1st ex.s. c 144 § 1.]

Additional notes found at www.leg.wa.gov

10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission—Medical or mental health treatment or services. (1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed two hundred fifty dollars. Costs for administering a pretrial supervision may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In deter-

mining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute. [2010 c 54 § 1; 2008 c 318 § 2; 2007 c 367 § 3; 2005 c 263 § 2; 1995 c 221 § 1; 1994 c 192 § 1; 1991 c 247 § 4; 1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

Findings—Intent—2008 c 318: "The legislature finds that because of the decision in *Utter v. DSHS*, 165 P.3d 399 (Wash. 2007), there is unintended ambiguity about the authority of the secretary of the department of social and health services under the criminal procedure act to seek reimbursement from defendants under RCW 10.77.250 who are committed for competency evaluation and mental health treatment under RCW 10.77.060 and 10.77.084, and the general provision prohibiting a criminal defendant from being charged for prosecution related costs prior to conviction provided in RCW 10.01.160. Mental health evaluation and treatment, and other medical treatment relate entirely to the medically necessary care that defendants receive at state hospitals and other facilities. The legislature intended for treatment costs to be the responsibility of the defendant's insurers and ultimately the defendant based on their ability to pay, and it is permissible under chapters 10.77, 70.48, and 43.20B RCW for the state and other governmental units to assess financial liability on defendants who become patients and receive medical and mental health care. The legislature further finds that it intended that a court order staying criminal proceedings under RCW 10.77.084, and committing a defendant to the custody of the secretary of the department of social and health services for placement in an appropriate facility involve costs payable by the defendant, because the commitment primarily and directly benefits the defendant through treatment of their medical and mental health conditions. The legislature did not intend for medical and mental health services provided to a defendant in the custody of a governmental unit, and the associated costs, to be costs related to the prosecution of the defendant. Thus, if a court orders a stay of the criminal proceeding under RCW 10.77.084 and orders commitment to the custody of the secretary, or if at any time a defendant receives other medical care while in custody of a governmental unit, but prior to conviction, the costs associated with such care shall be the responsibility of the defendant and the defendant's insurers as provided in chapters 10.77, 70.48, and 43.20B RCW. The intent of the legislature is to clarify this reimbursement requirement, and the purpose of

this act is to make retroactive, remedial, curative, and technical amendments in order to resolve any ambiguity about the legislature's intent in enacting these chapters." [2008 c 318 § 1.]

Effective date—2008 c 318: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 318 § 3.]

Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection and disposition: Chapter 10.82 RCW.

10.01.170 Fine or costs—Payment within specified time or installments. When a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the fine or costs shall be payable forthwith. [1975-'76 2nd ex.s. c 96 § 2.]

Payment of fine and costs in installments: RCW 9.92.070.

10.01.180 Fine or costs—Default in payment—Contempt of court—Enforcement, collection procedures. (1) A defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his or her appearance.

(2) When a fine or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or costs from those assets, and his or her failure to do so may be held to be contempt.

(3) If a term of imprisonment for contempt for nonpayment of a fine or costs is ordered, the term of imprisonment shall be set forth in the commitment order, and shall not exceed one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(4) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(5) A default in the payment of a fine or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or costs has actually been collected. [2010 c 8 § 1006; 1989 c 373 § 13; 1975-'76 2nd ex.s. c 96 § 3.]

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

Additional notes found at www.leg.wa.gov

10.01.190 Prosecutorial powers of attorney general. In any criminal proceeding instituted or conducted by the

attorney general, the attorney general and assistants are deemed to be prosecuting attorneys and have all prosecutorial powers vested in prosecuting attorneys of the state of Washington by statute or court rule. [1981 c 335 § 4.]

Purpose—1981 c 335: See RCW 43.10.230.

10.01.200 Registration of sex offenders and kidnapping offenders—Notice to defendants. The court shall provide written notification to any defendant charged with a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant. [1997 c 113 § 5; 1990 c 3 § 404.]

Reviser's note: The definitions in RCW 9A.44.128 apply to this section.

Findings—1997 c 113: See note following RCW 4.24.550.

Sex offense and kidnapping offense defined: RCW 9A.44.128.

Additional notes found at www.leg.wa.gov

10.01.210 Offender notification and warning. Any and all law enforcement agencies and personnel, criminal justice attorneys, sentencing judges, and state and local correctional facilities and personnel may, but are not required to, give any and all offenders either written or oral notice, or both, of the sanctions imposed and criminal justice changes regarding armed offenders, including but not limited to the subjects of:

(1) Felony crimes involving any deadly weapon special verdict under *RCW 9.94A.602;

(2) Any and all deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, as well as any federal firearm, ammunition, or other deadly weapon enhancements;

(3) Any and all felony crimes requiring the possession, display, or use of any deadly weapon as well as the many increased penalties for these crimes including the creation of theft of a firearm and possessing a stolen firearm;

(4) New prosecuting standards established for filing charges for all crimes involving any deadly weapons;

(5) Removal of good time for any and all deadly weapon enhancements; and

(6) Providing the death penalty for those who commit first degree murder: (a) To join, maintain, or advance membership in an identifiable group; (b) as part of a drive-by shooting; or (c) to avoid prosecution as a persistent offender as defined in RCW 9.94A.030. [2002 c 290 § 23; 1995 c 129 § 18 (Initiative Measure No. 159).]

***Reviser's note:** RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

10.01.220 City attorney, county prosecutor, or other prosecuting authority—Filing a criminal charge—Contribution, donation, payment. A city attorney, county prosecutor, or other prosecuting authority may not dismiss, amend, or agree not to file a criminal charge in exchange for

a contribution, donation, or payment to any person, corporation, or organization. This does not prohibit:

- (1) Contribution, donation, or payment to any specific fund authorized by state statute;
- (2) The collection of costs associated with actual supervision, treatment, or collection of restitution under agreements to defer or divert; or
- (3) Dismissal following payment that is authorized by any other statute. [2007 c 367 § 1.]

10.01.230 Victim impact panel registry—Panel minimum standards. (1) The Washington traffic safety commission may develop and maintain a registry of qualified victim impact panels. When imposing a requirement that an offender attend a victim impact panel under RCW 46.61.5152, the court may refer the offender to a victim impact panel that is listed in the registry. The Washington traffic safety commission may consult with victim impact panel organizations to develop and maintain a registry.

(2) To be listed on the registry, the victim impact panel must meet the following minimum standards:

(a) The victim impact panel must address the effects of driving while impaired on individuals and families and address alternatives to drinking and driving and drug use and driving;

(b) The victim impact panel should strive to have at least two different speakers, one of whom is a victim survivor of an impaired driving crash, to present their stories in person. A victim survivor may be the panel facilitator. The victim impact panel should be a minimum of sixty minutes of presentation, not including registration and administration time;

(c) The victim impact panel shall have policies and procedures to recruit, screen, train, and provide feedback and ongoing support to the panelists. The panel shall take reasonable steps to verify the authenticity of each panelist's story;

(d) The victim impact panel shall charge a reasonable fee to all persons required to attend, unless otherwise ordered by the court;

(e) The victim impact panel shall have a policy to prohibit admittance of anyone under the influence of alcohol or drugs, or anyone whose actions or behavior are otherwise inappropriate. The victim impact panel may institute additional admission requirements;

(f) The victim impact panel shall maintain attendance records for at least five years;

(g) The victim impact panel shall make reasonable efforts to use a facility that meets standards established by the Americans with disabilities act;

(h) The victim impact panel may provide referral information to other community services; and

(i) The victim impact panel shall have a designated facilitator who is responsible for the compliance with these minimum standards and who is responsible for maintaining appropriate records and communication with the referring courts and probationary departments regarding attendance or nonattendance. [2011 c 293 § 15.]

(2012 Ed.)

Chapter 10.04 RCW

DISTRICT COURT PROCEDURE—GENERALLY

Sections

10.04.020	Arrest—Offense committed in view of district judge.
10.04.040	Cash bail in lieu of recognizance.
10.04.050	Jury—If demanded.
10.04.070	Plea of guilty.
10.04.100	Verdict of guilty—Proceedings upon.
10.04.101	Assessment of punishment by courts organized under 1961 justice of the peace act.
10.04.110	Judgment—Entry—Execution—Remittance of district court fines, etc.
10.04.120	Stay of execution.
10.04.800	Proposed forms for criminal actions.

Rules of court: See *Criminal Rules for Courts of Limited Jurisdiction (CrRLJ)*.

10.04.020 Arrest—Offense committed in view of district judge. When any offense is committed in view of any district judge, the judge may, by verbal direction to any deputy, or if no deputy is present, to any citizen, cause such deputy or citizen to arrest such offender, and keep such offender in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant. [1987 c 202 § 149; Code 1881 § 1888; Code 1881 § 1889, part; 1873 p 382 § 186; 1854 p 260 § 173; RRS § 1926, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.040 Cash bail in lieu of recognizance. District courts or committing magistrates may accept money as bail from persons charged with bailable offenses, and for the appearance of witnesses in all cases provided by law for the recognizance of witnesses. The amount of such bail or recognizance in each case shall be determined by the court in its discretion, and may from time to time be increased or decreased as circumstances may justify. The money to be received and accounted for in the same manner as provided by law for the superior courts. [1987 c 202 § 150; 1919 c 76 § 1; RRS § 1957 1/2.]

Intent—1987 c 202: See note following RCW 2.04.190.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.04.050 Jury—If demanded. In all trials for offenses within the jurisdiction of a district judge, the defendant or the state may demand a jury, which shall consist of six, or a less number, agreed upon by the state and accused, to be impaneled and sworn as in civil cases; or the trial may be by the judge. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. [1987 c 202 § 151; 1891 c 11 § 1; Code 1881 § 1890; 1875 p 51 § 2; 1873 p 382 § 188; 1854 p 260 § 174, part; RRS § 1927.]

Intent—1987 c 202: See note following RCW 2.04.190.

Charging juries: State Constitution Art. 4 § 16.

Convicted persons liable for costs and jury fees: RCW 10.46.190.

Right to trial by jury: State Constitution Art. 1 § 21.

10.04.070 Plea of guilty. The defendant may plead guilty to any offense charged. [Code 1881 § 1892; 1873 p 383 § 190; 1854 p 260 § 174, part; RRS § 1929.]

10.04.100 Verdict of guilty—Proceedings upon. The judge, if the prisoner is found guilty, shall assess the prisoner's punishment; or if, in the judge's opinion, the punishment the judge is authorized to assess is not adequate to the offense, he or she may so find, and in such case the judge shall order such defendant to enter recognizance to appear in the superior court of the county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. [1987 c 202 § 152; 1891 c 11 § 2; Code 1881 § 1891; 1873 p 382 § 189; 1854 p 260 § 174; RRS § 1928.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.101 Assessment of punishment by courts organized under 1961 justice of the peace act. See RCW 3.66.065.

10.04.110 Judgment—Entry—Execution—Remittance of district court fines, etc. In all cases of conviction, unless otherwise provided in this chapter, the judge shall enter judgment for the fine and costs against the defendant, and may commit him or her to jail until the amount of such fine and costs owing are paid, or the payment thereof be secured as provided by RCW 10.04.120. The amount of such fine and costs owing shall be computed as provided for superior court cases in RCW 10.82.030 and 10.82.040. Further proceedings therein shall be had as in like cases in the superior court: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [2010 c 8 § 1007; 1987 c 202 § 153; 1969 ex.s. c 199 § 10; 1967 c 200 § 6; 1891 c 11 § 6; Code 1881 § 1896; 1873 p 383 § 194; 1854 p 261 § 176; RRS § 1933.]

Intent—1987 c 202: See note following RCW 2.04.190.

Convicted persons liable for jury fees: RCW 10.46.190.

10.04.120 Stay of execution. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the district judge, to enter into recognizance before the district judge for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the district judge, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the district judge shall proceed as in like cases in the superior court. [1987 c 202 § 154; Code 1881 § 1897; 1873 p 383 § 195; 1854 p 261 § 176; RRS § 1934.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.800 Proposed forms for criminal actions. The district and municipal court judges' association may propose to the supreme court suggested forms for criminal actions for inclusion in the justice court criminal rules. [1994 c 32 § 6; 1987 c 202 § 155.]

Rules of court: *CrRLJ 2.1, 4.2.*

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 10.05 RCW DEFERRED PROSECUTION— COURTS OF LIMITED JURISDICTION

Sections

10.05.010	Petition—Eligibility.
10.05.015	Statement of availability.
10.05.020	Requirements of petition—Rights of petitioner—Court findings.
10.05.030	Arraignment continued—Treatment referral.
10.05.040	Investigation and examination.
10.05.050	Report to court—Recommended treatment plan—Commitment to provide treatment.
10.05.055	Child welfare services.
10.05.060	Procedure upon approval of plan.
10.05.070	Arraignment when treatment rejected.
10.05.080	Evidence, uses and admissibility.
10.05.090	Procedure upon breach of treatment plan.
10.05.100	Conviction of similar offense.
10.05.110	Trial delay not grounds for dismissal.
10.05.120	Dismissal of charges.
10.05.130	Services provided for indigent defendants.
10.05.140	Conditions of granting.
10.05.150	Alcoholism program requirements.
10.05.160	Appeal of deferred prosecution order.
10.05.170	Supervision as condition—Levy of assessment.

10.05.010 Petition—Eligibility. (1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020 or *section 18 of this act. Such person shall not be eligible for a deferred prosecution program more than once; and cannot receive a deferred prosecution under both RCW 10.05.020 and *section 18 of this act. Separate offenses committed more than seven days apart may not be consolidated in a single program.

(3) A person charged with a misdemeanor or a gross misdemeanor under chapter 9A.42 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once. [2008 c 282 § 15; 2002 c 219 § 6; 1998 c 208 § 1; 1985 c 352 § 4; 1982 1st ex.s. c 47 § 26; 1975 1st ex.s. c 244 § 1.]

***Reviser's note:** Section 18 of this act was vetoed by the governor.

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legisla-

ture further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 § 3.]

Additional notes found at www.leg.wa.gov

10.05.015 Statement of availability. At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution program. [1985 c 352 § 5.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.020 Requirements of petition—Rights of petitioner—Court findings. (1) Except as provided in subsection (2) of this section, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment program as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of social and health services to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall also contain a case history and a written service plan from the department of social and health services.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to

revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges; (ii) sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution. [2010 c 269 § 9; 2008 c 282 § 16; 2002 c 219 § 7; 1996 c 24 § 1; 1985 c 352 § 6; 1975 1st ex.s. c 244 § 2.]

Effective date—2010 c 269: See note following RCW 46.20.385.

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Criminal history and driving record: RCW 46.61.513.

10.05.030 Arraignment continued—Treatment referral. The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved alcoholism treatment program as designated in chapter 70.96A RCW, if the petition alleges an alcohol problem, an approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem, to an approved mental health center, if the petition alleges a mental problem, or the department of social and health services if the petition is brought under RCW 10.05.020(2). [2002 c 219 § 8; 1999 c 143 § 42; 1975 1st ex.s. c 244 § 3.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

10.05.040 Investigation and examination. The *facility to which such person is referred, or the department of social and health services if the petition is brought under RCW 10.05.020(2), shall conduct an investigation and examination to determine:

(1) Whether the person suffers from the problem described;

(2) Whether the problem is such that if not treated, or if no child welfare services are provided, there is a probability that similar misconduct will occur in the future;

(3) Whether extensive and long term treatment is required;

(4) Whether effective treatment or child welfare services for the person's problem are available; and

(5) Whether the person is amenable to treatment or willing to cooperate with child welfare services. [2002 c 219 § 9; 1985 c 352 § 7; 1975 1st ex.s. c 244 § 4.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.050 Report to court—Recommended treatment plan—Commitment to provide treatment. (1) The *facility, or the department of social and health services if the petition is brought under RCW 10.05.020(2), shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment or the implementation of a child welfare service plan, it shall also recommend a treatment or service plan setting out:

- (a) The type;
- (b) Nature;
- (c) Length;
- (d) A treatment or service time schedule; and
- (e) Approximate cost of the treatment or child welfare services.

(2) In the case of a child welfare service plan, the plan shall be designed in a manner so that a parent who successfully completes the plan will not be likely to withhold the basic necessities of life from his or her child.

(3) The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility, or the department of social and health services if the petition is brought under RCW 10.05.020(2), making the written report shall append to the report a commitment by the *treatment facility or the department of social and health services that it will provide the treatment or child welfare services in accordance with this chapter. The facility or the service provider shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment or child welfare service plan proposed and (b) the petitioner's progress or failure in treatment or child welfare services. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment or services. [2002 c 219 § 10; 1985 c 352 § 8; 1975 1st ex.s. c 244 § 5.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.055 Child welfare services. Child welfare services provided under chapter 74.13 RCW pursuant to a deferred prosecution ordered under RCW 10.05.060 may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW. [2002 c 219 § 12.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

10.05.060 Procedure upon approval of plan. If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be filed with the court. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. Upon receipt of the abstract of the docket, the department shall issue the petitioner a probationary license in accordance with RCW 46.20.355, and the petitioner's driver's license shall be on probationary status for five years from the date of the violation that gave rise to the charge. The department shall maintain the record for ten years from date of entry of the order granting deferred prosecution. [2009 c 135 § 1; 1994 c 275 § 17; 1990 c 250 § 13; 1985 c 352 § 9; 1979 c 158 § 4; 1975 1st ex.s. c 244 § 6.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Additional notes found at www.leg.wa.gov

10.05.070 Arraignment when treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the treatment plan, the petitioner shall be arraigned on the charge. [1985 c 352 § 10; 1975 1st ex.s. c 244 § 7.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.080 Evidence, uses and admissibility. If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence. [1985 c 352 § 11; 1975 1st ex.s. c 244 § 8.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.090 Procedure upon breach of treatment plan. If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720, the facility, center, institution, or agency administering the treatment or

the entity administering the use of the device, shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the deferred prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment. [2010 c 269 § 10; 2008 c 282 § 17; 1997 c 229 § 1; 1994 c 275 § 18; 1985 c 352 § 12; 1975 1st ex.s. c 244 § 9.]

Effective date—2010 c 269: See note following RCW 46.20.385.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Additional notes found at www.leg.wa.gov

10.05.100 Conviction of similar offense. If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a deferred prosecution program, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020. [1998 c 208 § 2; 1985 c 352 § 13; 1975 1st ex.s. c 244 § 10.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Additional notes found at www.leg.wa.gov

10.05.110 Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this chapter shall not be grounds for dismissal. [1985 c 352 § 14; 1975 1st ex.s. c 244 § 11.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.120 Dismissal of charges. (1) Three years after receiving proof of successful completion of the two-year treatment program, and following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution pursuant to a petition brought under RCW 10.05.020(1), the court shall dismiss the charges pending against the petitioner.

(2) When a deferred prosecution is ordered pursuant to a petition brought under RCW 10.05.020(2) and the court has received proof that the petitioner has successfully completed the child welfare service plan, or the plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home, the court shall dismiss the charges pending against the petitioner: PROVIDED, That in any case where the petitioner's parental rights have been terminated with regard to the alleged victim

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due to abuse or neglect that occurred during the pendency of the deferred prosecution, the termination shall be per se evidence that the petitioner did not successfully complete the child welfare service plan. [2003 c 220 § 1; 2002 c 219 § 14; 1998 c 208 § 3; 1994 c 275 § 19; 1985 c 352 § 15; 1983 c 165 § 45; 1975 1st ex.s. c 244 § 12.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

10.05.130 Services provided for indigent defendants. Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment. [1975 1st ex.s. c 244 § 13.]

10.05.140 Conditions of granting. As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(3) (a), (b), and (c). As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order. [2011 c 293 § 8; 2004 c 95 § 1; 2003 c 220 § 2; 1999 c 331 § 4; 1997 c 229 § 2; 1991 c 247 § 1; 1985 c 352 § 16.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Additional notes found at www.leg.wa.gov

10.05.150 Alcoholism program requirements. A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved alcoholism treatment program;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved alcoholism treatment program as described in chapter 70.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program. [1999 c 143 § 43; 1985 c 352 § 17.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.160 Appeal of deferred prosecution order. The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment program;

(5) Failure of the court to order the installation of an ignition interlock or other device under RCW 10.05.140. [2010 c 269 § 11; 2008 c 282 § 19; 1999 c 143 § 44; 1998 c 208 § 4; 1985 c 352 § 18.]

Effective date—2010 c 269: See note following RCW 46.20.385.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Additional notes found at www.leg.wa.gov

10.05.170 Supervision as condition—Levy of assessment. As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral and may levy a monthly assessment upon the petitioner as provided in RCW 10.64.120. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every six months request from the department of licensing an abstract of the petitioner's driving record; and

(2) At least once every month make contact with the petitioner or with any agency to which the petitioner has been directed for treatment as a part of the deferral. [1991 c 247 § 2; 1985 c 352 § 19.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Chapter 10.10 RCW CRIMINAL APPEALS FROM DISTRICT COURTS

Sections

10.10.010 Court rules.
10.10.060 Appeal—Costs—Default.

Rules of court: *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).*

10.10.010 Court rules. Every person convicted before a district judge of any offense may appeal from the judgment as provided by court rules. [1987 c 202 § 156; 1891 c 29 § 6, part; RRS § 1919, part. Prior: Code 1881 § 1898, part; 1877 p 203 § 7, part; 1873 p 384 § 196, part; 1854 p 261 § 177. Formerly RCW 10.10.010, 10.10.020, and 10.10.030.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.10.060 Appeal—Costs—Default. The appellant in a criminal action shall not be required to advance any fees in claiming his or her appeal nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his or her appeal, he or she may be required as a part of the sentence to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his or her appeal he or she shall be defaulted of his or her recognizance, if any was taken, and the superior court may award sentence against him or her for the offense whereof he or she was convicted in like manner as if he or she had been convicted thereof in that court; and if he or she be not then in custody process may be issued to bring him or her into court to receive sentence. [2010 c 8 § 1008; 1891 c 29 § 7; RRS § 1920. Prior: Code 1881 § 1900; 1873 p 384 § 198, part; 1854 p 261 § 179. Formerly RCW 10.10.060 and 10.10.080.]

Chapter 10.14 RCW HARASSMENT

Sections

10.14.010 Legislative finding, intent.
10.14.020 Definitions.
10.14.030 Course of conduct—Determination of purpose.
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10.14.180	Modification of order.
10.14.190	Constitutional rights.
10.14.200	Availability of orders in family law proceedings.
10.14.210	Court appearance after violation.
10.14.900	Severability—1987 c 280.

10.14.010 Legislative finding, intent. The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator. [1987 c 280 § 1.]

10.14.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child. [2011 c 307 § 2; 2001 c 260 § 2; 1999 c 27 § 4; 1995 c 127 § 1; 1987 c 280 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2001 c 260: "The legislature finds that unlawful harassment directed at a child by a person under the age of eighteen is not acceptable and can have serious consequences. The legislature further finds that some interactions between minors, such as "schoolyard scuffles," though not to be condoned, may not rise to the level of unlawful harassment. It is the intent of the legislature that a protection order sought by the parent or guardian of a child as provided for in this chapter be available only when the alleged behavior of the person under the age of eighteen to be restrained rises to the level set forth in chapter 10.14 RCW." [2001 c 260 § 1.]

Intent—1999 c 27: See note following RCW 9A.46.020.

10.14.030 Course of conduct—Determination of purpose. In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

(1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:

(a) Protect property or liberty interests;

(b) Enforce the law; or

(c) Meet specific statutory duties or requirements;

(5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;

(6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order. [1987 c 280 § 3.]

10.14.040 Protection order—Petition. There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought or as provided in RCW 10.14.055. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

(7) The parent or guardian of a child under the age of eighteen may petition in superior court for an order of protection to restrain a person under the age of eighteen years from contact with that child only in cases where the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under investigation or has been investigated for such an offense. In issuing a protection order under this subsection, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by a transfer of the alleged offender to another school. The court may order that the per-

son restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen years protected by the order. In the event that the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends. [2002 c 117 § 1; 2001 c 260 § 3. Prior: 1995 c 292 § 2; 1995 c 127 § 2; 1987 c 280 § 4.]

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

10.14.050 Administrator for courts—Forms, information. The administrator for the courts shall develop and prepare, in consultation with interested persons, model forms and instructional brochures required under RCW 10.14.040(3). [1987 c 280 § 5.]

10.14.055 Fees excused, when. No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter from a person who has stalked them as that term is defined in RCW 9A.46.110, or from a person who has engaged in conduct that would constitute a sex offense as defined in *RCW 9A.44.130, or from a person who is a family or household member as defined in RCW 26.50.010(2) who has engaged in conduct that would constitute domestic violence as defined in RCW 26.50.010(1). [2002 c 117 § 2.]

***Reviser's note:** RCW 9A.44.130 was amended by 2010 c 267 § 2, removing the definition of "sex offense" and "kidnapping offense." Those terms are now defined in RCW 9A.44.128.

10.14.060 Proceeding in forma pauperis. Persons seeking relief under this chapter may file an application for leave to proceed in forma pauperis on forms supplied by the court. If the court determines that a petitioner lacks the funds to pay the costs of filing, the petitioner shall be granted leave to proceed in forma pauperis and no filing fee or any other court related fees shall be charged by the court to the petitioner for relief sought under this chapter. If the petitioner is granted leave to proceed in forma pauperis, then no fees for service may be charged to the petitioner. [1987 c 280 § 6.]

10.14.065 Orders—Judicial information system to be consulted. Before granting an order under this chapter, the court may consult the judicial information system, if available, to determine criminal history or the pendency of other proceedings involving the parties. [2011 c 307 § 6.]

10.14.070 Hearing—Service. Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. If the petition alleges a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as pro-

vided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085. [2005 c 144 § 1; 1992 c 143 § 10; 1987 c 280 § 7.]

10.14.080 Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal—Acts not prohibited. (1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for one year or more, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a minimum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for

a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- (a) Restraining the respondent from making any attempts to contact the petitioner;
- (b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;
- (c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and
- (d) Considering the provisions of RCW 9.41.800.

(7) The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

(8) The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim unless that order is issued under chapter 26.09 RCW or under a separate action commenced with a summons and complaint to determine title or possession of real property.

(9) The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall not limit the respondent's right to care, control, or custody of the respondent's minor child, unless that order is issued under chapter 13.32A, 26.09, 26.10, or 26.26 RCW.

(10) A petitioner may not obtain an ex parte temporary anti-harassment protection order against a respondent if the

petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil anti-harassment protection order unless good cause for such failure can be shown.

(11) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section. [2011 c 307 § 3; 2001 c 311 § 1; 1995 c 246 § 36; 1994 sp.s. c 7 § 448; 1992 c 143 § 11; 1987 c 280 § 8.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

10.14.085 Hearing reset after ex parte order—Service by publication—Circumstances. (1) If the respondent was not personally served with the petition, notice of hearing, and ex parte order before the hearing, the court shall reset the hearing for twenty-four days from the date of entry of the order and may order service by publication instead of personal service under the following circumstances:

(a) The sheriff or municipal officer files an affidavit stating that the officer was unable to complete personal service upon the respondent. The affidavit must describe the number and types of attempts the officer made to complete service;

(b) The petitioner files an affidavit stating that the petitioner believes that the respondent is hiding from the server to avoid service. The petitioner's affidavit must state the reasons for the belief that the petitioner [respondent] is avoiding service;

(c) The server has deposited a copy of the summons, in substantially the form prescribed in subsection (3) of this section, notice of hearing, and the ex parte order of protection in the post office, directed to the respondent at the respondent's last known address, unless the server states that the server does not know the respondent's address; and

(d) The court finds reasonable grounds exist to believe that the respondent is concealing himself or herself to avoid service, and that further attempts to personally serve the respondent would be futile or unduly burdensome.

(2) The court shall reissue the temporary order of protection not to exceed another twenty-four days from the date of reissuing the ex parte protection order and order to provide service by publication.

(3) The publication shall be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The newspaper selected must be one of the three most widely circulated papers in the county. The publication of summons shall not be made until the court orders service by publication under this section. Service of the summons shall be considered complete when the publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons shall contain the date of the first publication, and shall require the respondent upon whom service by publication is desired, to appear and answer the petition on the date set for the hearing. The summons shall also contain a brief statement of the reason for the petition and a summary

of the provisions under the ex parte order. The summons shall be essentially in the following form:

In the court of the state of Washington for the county of

., Petitioner vs. No.

., Respondent The state of Washington to (respondent):

You are hereby summoned to appear on the day of, 19, at a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of chapter 10.14 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

. Petitioner

[1992 c 143 § 12.]

10.14.090 Representation or appearance. (1) Nothing in this chapter shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(2) The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney’s fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense. [1992 c 143 § 14; 1987 c 280 § 9.]

10.14.100 Service of order. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court’s order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the court’s satisfaction that the respondent has previously been personally served with the temporary order.

(6) Except in cases where the petitioner has fees waived under RCW 10.14.055 or is granted leave to proceed in forma

pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW 10.14.085, the court may permit service by publication of the order of protection issued under RCW 10.14.080. Service by publication must comply with the requirements of RCW 10.14.085. [2002 c 117 § 3; 2001 c 311 § 2; 1992 c 143 § 15; 1987 c 280 § 10.]

10.14.105 Order following service by publication.

Following completion of service by publication as provided in RCW 10.14.085, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 10.14.080. That order must be served pursuant to RCW 10.14.100, and forwarded to the appropriate law enforcement agency pursuant to RCW 10.14.110. [1992 c 143 § 13.]

10.14.110 Notice to law enforcement agencies—Enforceability.

(1) A copy of an antiharassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based system shall include notice to law enforcement whether the order was personally served or served by publication. [1992 c 143 § 16; 1987 c 280 § 11.]

10.14.115 Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order.

(1) When the court issues an order of protection pursuant to RCW 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation. [1992 c 143 § 17.]

10.14.120 Disobedience of order—Penalties.

Any willful disobedience by a respondent age eighteen years or over of any temporary antiharassment protection order or civil antiharassment protection order issued under this chap-

ter subjects the respondent to criminal penalties under this chapter. Any respondent age eighteen years or over who willfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.21 RCW. Any respondent under the age of eighteen years who willfully disobeys the terms of an order issued under this chapter may, in the court's discretion, be found in contempt of court and subject to the sanction specified in RCW 7.21.030(4). [2001 c 260 § 4; 1989 c 373 § 14; 1987 c 280 § 12.]

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

Additional notes found at www.leg.wa.gov

10.14.125 Service by publication—Costs. The court may permit service by publication under this chapter only if the petitioner pays the cost of publication or if the petitioner's costs have been waived pursuant to RCW 10.14.055, unless the county legislative authority allocates funds for service of process by publication for petitioners who are granted leave to proceed in forma pauperis. [2002 c 117 § 4; 1992 c 143 § 18.]

10.14.130 Exclusion of certain actions. Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 7.90, 10.99, or 26.50 RCW. [2006 c 138 § 22; 1987 c 280 § 13.]

Short title—2006 c 138: See RCW 7.90.900.

10.14.140 Other remedies. Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies. [1987 c 280 § 14.]

10.14.150 Jurisdiction. (1) The district courts shall have original jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(2) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(3) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought

under RCW 10.14.120 and 10.14.170. [2011 c 307 § 1; 2005 c 196 § 1; 1999 c 170 § 1; 1991 c 33 § 2; 1987 c 280 § 15.]

Additional notes found at www.leg.wa.gov

10.14.155 Personal jurisdiction—Nonresident individual. (1) In a proceeding in which a petition for an order for protection under this chapter is sought, a court of this state may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within this state;

(b) The individual submits to the jurisdiction of this state by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred within this state;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred outside this state and are part of an ongoing pattern of harassment that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in this state; or

(ii) As a result of acts of harassment, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; or

(e) There is any other basis consistent with RCW 4.28.185 or with the constitutions of this state and the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this state. For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state." [2010 c 274 § 308.]

Intent—2010 c 274: See note following RCW 10.31.100.

10.14.160 Where action may be brought. For the purposes of this chapter an action may be brought in:

(1) The judicial district of the county in which the alleged acts of unlawful harassment occurred;

(2) The judicial district of the county where any respondent resides at the time the petition is filed;

(3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides;

(4) The municipality in which the alleged acts of unlawful harassment occurred;

(5) The municipality where any respondent resides at the time the petition is filed; or

(6) The municipality where a respondent may be served if it is the same county or judicial district where a respondent resides. [2005 c 196 § 2; 1992 c 127 § 1; 1987 c 280 § 16.]

10.14.170 Criminal penalty. Any respondent age eighteen years or over who willfully disobeys any civil anti-harassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor. [2001 c 260 § 5; 1987 c 280 § 17.]

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

10.14.180 Modification of order. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified order or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system. [1987 c 280 § 18.]

10.14.190 Constitutional rights. Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly. [1987 c 280 § 19.]

10.14.200 Availability of orders in family law proceedings. Any order available under this chapter may be issued in actions under chapter 13.32A, 26.09, 26.10, or 26.26 RCW. An order available under this chapter that is issued under those chapters shall be fully enforceable and shall be enforced pursuant to the provisions of this chapter. [1999 c 397 § 4; 1995 c 246 § 35.]

Additional notes found at www.leg.wa.gov

10.14.210 Court appearance after violation. (1) A defendant arrested for violating any civil anti-harassment protection order issued pursuant to this chapter is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release in accordance with RCW 9A.46.050.

(2) A defendant who is charged by citation, complaint, or information with violating any civil anti-harassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in accordance with RCW 9A.46.050.

(3) Appearances required pursuant to this section are mandatory and cannot be waived. [2012 c 223 § 4.]

10.14.900 Severability—1987 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 280 § 22.]

Chapter 10.16 RCW PRELIMINARY HEARINGS

Sections

10.16.080	Discharge of defendant—F frivolous complaints.
10.16.100	Abstract of costs forwarded with transcript.
10.16.110	Statement of prosecuting attorney if no information filed—Court action.
10.16.145	Witnesses—Recognizances with sureties.
10.16.150	Recognizances for minors.
10.16.160	Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge.

Magistrates: Chapter 2.20 RCW.

Municipal judges as magistrates: RCW 35.20.020, 35.20.250.

10.16.080 Discharge of defendant—F frivolous complaints. If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he or she shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint. [2010 c 8 § 1009; Code 1881 § 1925; 1873 p 395 § 223; 1854 p 107 § 31; RRS § 1954.]

10.16.100 Abstract of costs forwarded with transcript. In all cases where any magistrate shall order a defendant to recognize for his or her appearance before a district or superior court, the magistrate shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case. [1987 c 202 § 163; Code 1881 § 1937; 1873 p 397 § 236; 1854 p 109 § 44; RRS § 1966.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.16.110 Statement of prosecuting attorney if no information filed—Court action. It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail; and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he or she shall make, subscribe, and file with the clerk of the court a statement in writing containing his or her reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the session of court at which the offender shall be held for his or her appearance: PROVIDED, That in such case such court may examine such statement, together with the evidence filed in the case, and if upon such examination the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial. [2010 c 8 § 1010; 1890 p 102 § 6; RRS § 2053. Formerly RCW 10.16.110 and 10.16.120.]

10.16.145 Witnesses—Recognizances with sureties.

If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his or her recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his or her appearance at court. [2010 c 8 § 1011; Code 1881 § 1930; 1873 p 396 § 229; 1854 p 108 § 37; RRS § 1960. Formerly codified in RCW 10.16.140, part.]

Rules of court: *This section probably superseded by CrR 6.13. See comment after CrR 6.13.*

10.16.150 Recognizances for minors. When any minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his or her discretion, take the recognizance of such minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability of minority. [2010 c 8 § 1012; 1973 1st ex.s. c 154 § 19; Code 1881 § 1931; 1873 p 396 § 230; 1854 p 108 § 38; RRS § 1961.]

Rules of court: *This section probably superseded by CrR 6.13. See comment after CrR 6.13.*

Additional notes found at www.leg.wa.gov

10.16.160 Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge. All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: PROVIDED, That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, the magistrate shall immediately take the deposition of such witness and discharge the witness from custody upon the witness' own recognizance. The testimony of the witness shall be reduced to writing by a district judge or some competent person under the judge's direction, and only the exact words of the witness shall be taken; the deposition, except the cross-examination, shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; the defendant may make any objections to the admission of any part of the testimony, and all objections shall be noted by the district judge; but the district judge shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections the witness may desire to make thereto shall be made in presence of the defendant by adding the same to the deposition as first taken; it must be signed by the witness, certified by the district judge, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to the judge of such superior court, upon the objections noted by the district judge, and such judge shall suppress so much of said deposition as such judge shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the

case, either before the grand jury or upon the trial in the court. [1987 c 202 § 164; 1891 c 11 § 15; Code 1881 § 1932; 1877 p 203 § 8; 1873 p 396 § 232; 1854 p 108 § 39; RRS § 1962. Formerly RCW 10.16.160, 10.16.170, and 10.16.180.]

Rules of court: *This section modified if not superseded by CrR 6.13. See comment after CrR 6.13.*

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 10.19 RCW BAIL AND APPEARANCE BONDS

Sections

- 10.19.040 Officers authorized to take recognizance and approve bail.
- 10.19.055 Class A or B felony offenses—Bail for release determined by judicial officer.
- 10.19.060 Certification and filing of recognizances.
- 10.19.065 Taking and entering recognizances.
- 10.19.090 Forfeiture, exoneration of recognizances—Judgment—Execution.
- 10.19.100 Stay of execution of forfeiture judgment—Bond.
- 10.19.105 Forfeiture judgment vacated on defendant's production—When.
- 10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action.
- 10.19.120 Actions not barred by defect of form or formality.
- 10.19.140 Return of bond to surety, when.
- 10.19.150 Liability of surety, limitation.
- 10.19.160 Surrender of person under surety's bond.
- 10.19.170 Violent offenders—Reasons for release without bail.

Bail

arresting officer's duties regarding: RCW 10.31.030.

pending appeal to supreme court: RCW 10.73.040.

traffic offenses, nonresidents: RCW 46.64.035.

Fugitives, bail: Chapter 10.88 RCW.

Recognizance

for stay of execution: RCW 10.82.020, 10.82.025.

to keep the peace as incidence of conviction of crime: RCW 10.64.070, 10.64.075.

Recognizances relative to preliminary hearings: Chapter 10.16 RCW.

10.19.040 Officers authorized to take recognizance and approve bail. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he or she may administer an oath and examine the bail as to its sufficiency. [2010 c 8 § 1013; Code 1881 § 1034; 1873 p 229 § 214; 1854 p 114 § 78; RRS § 2087. FORMER PART OF SECTION: 1891 c 11 § 13; Code 1881 § 1927; 1873 p 395 § 225; 1854 p 108 § 33; RRS § 1957, now codified in RCW 10.16.070.]

10.19.055 Class A or B felony offenses—Bail for release determined by judicial officer. Bail for the release of a person arrested and detained for a class A or B felony offense must be determined on an individualized basis by a judicial officer. [2012 c 6 § 1; 2010 c 254 § 2.]

10.19.060 Certification and filing of recognizances. Every recognizance taken by any peace officer must be certified by him or her forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and, from the time of filing, it has the same effect as if taken in open court. [2010 c 8 § 1014; Code 1881 § 1035; 1873 p 230 § 215; 1854 p 114 § 79; RRS § 2088.]

10.19.065 Taking and entering recognizances.

Recognizances in criminal proceedings may be taken in open court and entered on the order book. [Code 1881 § 1033; 1854 p 114 § 77; RRS § 2086.]

10.19.090 Forfeiture, exoneration of recognizances—

Judgment—Execution. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within thirty days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated. [1986 c 322 § 2; Code 1881 § 1137; 1873 p 230 § 217; 1867 p 103 § 1; RRS § 2231.]

Additional notes found at www.leg.wa.gov

10.19.100 Stay of execution of forfeiture judgment—

Bond. The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time. [1891 c 28 § 86; Code 1881 § 1138; 1873 p 242 § 281; 1867 p 103 § 2; RRS § 2232. FORMER PART OF SECTION: 1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233, now codified as RCW 10.19.105.]

10.19.105 Forfeiture judgment vacated on defendant's production—When.

If a bond be given and execution stayed, as provided in RCW 10.19.100, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors. [1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233. Formerly RCW 10.19.100, part.]

10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action.

All recognizances taken and forfeited before any district judge or magistrate, shall be forthwith certified to the clerk of the superior court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as the prosecuting attorney may elect to proceed against. [1987 c 202 § 165; Code 1881 § 1166; 1873 p 230 § 215; 1854 p 128 § 175; RRS § 2234. FORMER PART OF SECTION: Code 1881 § 1936; 1873 p 397 § 235; 1863 p 390 § 216; 1859 p 141 § 185; 1854 p 109 § 43; RRS § 1965, now codified as RCW 10.16.190.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.19.120 Actions not barred by defect of form or formality.

No action brought on any recognizance, bail, or appearance bond given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court or before what district judge the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded. [1987 c 202 § 166; 1891 c 28 § 88; Code 1881 § 1167; 1854 p 129 § 176; RRS § 2235. FORMER PART OF SECTION: Code 1881 § 749; 1854 p 219 § 489; RRS § 777, now codified as RCW 19.72.170.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.19.140 Return of bond to surety, when.

If a forfeiture has been entered against a person in a criminal case and the person is returned to custody or produced in court within twelve months from the forfeiture, then the full amount of the bond, less any and all costs determined by the court to have been incurred by law enforcement in transporting, locating, apprehending, or processing the return of the person to the jurisdiction of the court, shall be remitted to the surety if the surety was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement. [1986 c 322 § 3.]

Additional notes found at www.leg.wa.gov

10.19.150 Liability of surety, limitation.

The liability of the surety is limited to the amount of the bond when acting within the scope of the surety's duties in issuing the bond. [1986 c 322 § 4.]

Additional notes found at www.leg.wa.gov

10.19.160 Surrender of person under surety's bond.

The surety on the bond may return to custody a person in a criminal case under the surety's bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. The surrender shall be made to the facility in which the person was originally held in custody or the county or city jail affiliated with the court issuing the warrant resulting in bail. [1986 c 322 § 5.]

Additional notes found at www.leg.wa.gov

10.19.170 Violent offenders—Reasons for release without bail.

Notwithstanding CrR 3.2, a court who releases a defendant arrested or charged with a violent offense as defined in RCW 9.94A.030 on the offender's personal recognizance or personal recognizance with conditions must state on the record the reasons why the court did not require the defendant to post bail. [1996 c 181 § 1.]

Chapter 10.21 RCW

BAIL DETERMINATIONS UNDER ARTICLE I,
SECTION 20—CONDITIONS OF RELEASE

Sections

10.21.010	Intent.
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10.21.010 Intent. It is the intent of the legislature to enact a law for the purpose of reasonably assuring public safety in bail determination hearings and hearings pursuant to the proposed amendment to Article I, section 20 of the state Constitution set forth in House Joint Resolution No. 4220. Other provisions of law address matters relating to assuring the appearance of the defendant at trial and preventing interference with the administration of justice. [2010 c 254 § 3.]

Intent—2010 c 254: "The legislature intends by this act to require an individualized determination by a judicial officer of conditions of release for persons in custody for felony. This requirement is consistent with constitutional requirements and court rules regarding the right of a detained person to a prompt determination of probable cause and judicial review of the conditions of release and the requirement that judicial determinations of bail or release be made no later than the preliminary appearance stage." [2010 c 254 § 1.]

Contingent effective date—2010 c 254: "Sections 1 and 2 of this act take effect January 1, 2011. Sections 3 through 10 of this act take effect January 1, 2011, only if the proposed amendment to Article I, section 20 of the state Constitution proposed in House Joint Resolution No. 4220 is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, sections 3 through 11 of this act are null and void in their entirety." [2010 c 254 § 14.] House Joint Resolution No. 4220 was approved and ratified by the voters November 2, 2010.

10.21.020 Appearance before judicial officer—Issuance of order. Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer must issue an order that, pending trial, the person be:

- (1) Released on personal recognizance;
- (2) Released on a condition or combination of conditions ordered under RCW 10.21.030 or other provision of law;
- (3) Temporarily detained as allowed by law; or
- (4) Detained as provided under chapter 254, Laws of 2010. [2010 c 254 § 4.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

10.21.030 Conditions of release—Judicial officer may amend order. (1) The judicial officer may at any time amend the order to impose additional or different conditions of release. The conditions imposed under this chapter supplement but do not supplant provisions of law allowing the imposition of conditions to assure the appearance of the defendant at trial or to prevent interference with the administration of justice.

(2) Appropriate conditions of release under this chapter include, but are not limited to, the following:

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(a) The defendant may be placed in the custody of a designated person or organization agreeing to supervise the defendant;

(b) The defendant may have restrictions placed upon travel, association, or place of abode during the period of release;

(c) The defendant may be required to comply with a specified curfew;

(d) The defendant may be required to return to custody during specified hours or to be placed on electronic monitoring, if available. The defendant, if convicted, may not have the period of incarceration reduced by the number of days spent on electronic monitoring;

(e) The defendant may be prohibited from approaching or communicating in any manner with particular persons or classes of persons;

(f) The defendant may be prohibited from going to certain geographical areas or premises;

(g) The defendant may be prohibited from possessing any dangerous weapons or firearms;

(h) The defendant may be prohibited from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant. The defendant may be required to submit to testing to determine the defendant's compliance with this condition;

(i) The defendant may be prohibited from operating a motor vehicle that is not equipped with an ignition interlock device;

(j) The defendant may be required to report regularly to and remain under the supervision of an officer of the court or other person or agency; and

(k) The defendant may be prohibited from committing any violations of criminal law. [2010 c 254 § 5.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

10.21.040 Detention order—Hearing—Expedited review. If, after a hearing on offenses prescribed in Article I, section 20 of the state Constitution, the judicial officer finds, by clear and convincing evidence, that a person shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons, and finds that no condition or combination of conditions will reasonably assure the safety of any other person and the community, such judicial officer must order the detention of the person before trial. The detainee is entitled to expedited review of the detention order by the court of appeals under the writ provided in RCW 7.36.160. [2010 c 254 § 6.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

10.21.050 Conditions of release—Judicial officer to consider available information. The judicial officer must, in determining whether there are conditions of release that will reasonably assure the safety of any other person and the community, take into account the available information concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence;

(2) The weight of the evidence against the defendant; and

(3) The history and characteristics of the defendant, including:

(a) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(b) Whether, at the time of the current offense or arrest, the defendant was on community supervision, probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and

(c) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. [2010 c 254 § 7.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

10.21.060 Hearing—Appearance—Defendant's right to representation—Detention of defendant. (1) The judicial officer must hold a hearing in cases involving offenses prescribed in Article I, section 20, to determine whether any condition or combination of conditions will reasonably assure the safety of any other person and the community upon motion of the attorney for the government.

(2) The hearing must be held immediately upon the defendant's first appearance before the judicial officer unless the defendant, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person must be detained.

(3) At the hearing, such defendant has the right to be represented by counsel, and, if financially unable to obtain representation, to have counsel appointed. The defendant must be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding that no condition or combination of conditions will reasonably assure the safety of any other person and the community must be supported by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons.

(4) The defendant may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the safety of any other person and the community. [2010 c 254 § 8.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

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10.21.070 Release order—Requirements. In a release order issued under RCW 10.21.030 the judicial officer must:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and

(2) Advise the defendant of:

(a) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release; and

(b) The consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest. [2010 c 254 § 9.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

10.21.080 Detention order—Requirements—Temporary release. (1) In a detention order issued under RCW 10.21.040, the judicial officer must:

(a) Include written findings of fact and a written statement of the reasons for the detention;

(b) Direct that the person be committed to the custody of the appropriate correctional authorities for confinement separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; and

(c) Direct that the person be afforded reasonable opportunity for private consultation with counsel.

(2) The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of an appropriate law enforcement officer or other appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason. [2010 c 254 § 10.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

10.21.900 Construction of chapter. Nothing in this chapter may be construed as modifying or limiting the presumption of innocence. [2010 c 254 § 11.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

Chapter 10.22 RCW COMPROMISE OF MISDEMEANORS

Sections

10.22.010	When permitted—Exceptions.
10.22.020	Procedure—Costs.
10.22.030	Compromise in all other cases forbidden.

10.22.010 When permitted—Exceptions. When a defendant is prosecuted in a criminal action for a misdemeanor, other than a violation of RCW 9A.48.105, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

(1) By or upon an officer while in the execution of the duties of his or her office;

(2) Riotously;

(3) With an intent to commit a felony; or

(4) By one family or household member against another as defined in RCW 10.99.020 and was a crime of domestic

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violence as defined in RCW 10.99.020. [2010 c 8 § 1015; 2008 c 276 § 308; 1999 c 143 § 45; 1989 c 411 § 3; Code 1881 § 1040; 1854 p 115 § 84; RRS § 2126. FORMER PART OF SECTION: Code 1881 § 1935; 1873 p 397 § 234; 1854 p 109 § 42; RRS § 1964, now codified as RCW 10.16.135.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

10.22.020 Procedure—Costs. In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge, in writing, that he or she has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense. [2010 c 8 § 1016; 1891 c 28 § 63; Code 1881 §§ 1041, 1042; 1873 p 230 § 220; 1854 p 115 § 84; RRS § 2127.]

10.22.030 Compromise in all other cases forbidden. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. [1891 c 28 § 64; Code 1881 § 1043; RRS § 2128.]

Chapter 10.25 RCW JURISDICTION AND VENUE

Sections

10.25.065	Perjury outside the state.
10.25.070	Change of venue—Procedure.
10.25.130	Costs.
10.25.140	Change of venue by outside jury.

10.25.065 Perjury outside the state. Perjury committed outside of the state of Washington in a statement, declaration, verification, or certificate authorized by RCW 9A.72.085 is punishable in the county in this state in which occurs the act, transaction, matter, action, or proceeding, in relation to which the statement, declaration, verification, or certification was given or made. [1981 c 187 § 4.]

10.25.070 Change of venue—Procedure. The defendant may show to the court, by affidavit, that he or she believes he or she cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist. [2010 c 8 § 1017; 1891 c 28 § 7; Code 1881 § 1072; 1854 p 117 § 98; RRS § 2018.]

10.25.130 Costs. When a criminal case is transferred to another county pursuant to this chapter the county from which such case is transferred shall pay to the county in

which the case is tried all costs accrued for per diem and mileage for jurors and witnesses and all other costs properly charged to a convicted defendant. [1961 c 303 § 2.]

10.25.140 Change of venue by outside jury. When a change of venue is ordered and the court, upon motion to transfer a jury or in the absence of such motion, determines that it would be more economical to move the jury than to move the pending action and that justice will be served, a change of venue shall be accomplished by the selection of a jury in the county to which the venue would otherwise have been transferred and the selected jury moved to the county where the indictment or information was filed. [1981 c 205 § 1.]

Chapter 10.27 RCW

GRAND JURIES—CRIMINAL INVESTIGATIONS

Sections

10.27.010	Short title—Purpose.
10.27.020	Definitions.
10.27.030	Summoning grand jury.
10.27.040	Selection of grand jury members.
10.27.050	Special inquiry judge—Selection.
10.27.060	Discharge of panel, juror—Grounds.
10.27.070	Oath—Officers—Witnesses.
10.27.080	Persons authorized to attend—Restrictions on attorneys.
10.27.090	Secrecy enjoined—Exceptions—Use and availability of evidence.
10.27.100	Inquiry as to offenses—Duties—Investigation.
10.27.110	Duration of sessions—Extensions.
10.27.120	Self-incrimination—Right to counsel.
10.27.130	Self-incrimination—Refusal to testify or give evidence—Procedure.
10.27.140	Witnesses—Attendance.
10.27.150	Indictments—Issuance.
10.27.160	Grand jury report.
10.27.170	Special inquiry judge—Petition for order.
10.27.180	Special inquiry judge—Disqualification from subsequent proceedings.
10.27.190	Special inquiry judge—Direction to public attorney for proceedings in another county—Procedure.

Interpreters—Legal proceedings: Chapter 2.42 RCW.

Juries: Chapter 2.36 RCW.

10.27.010 Short title—Purpose. This chapter shall be known as the criminal investigatory act of 1971 and is enacted on behalf of the people of the state of Washington to serve law enforcement in combating crime and corruption. [1971 ex.s. c 67 § 1.]

10.27.020 Definitions. For the purposes of this chapter:

(1) The term "court" shall mean any superior court in the state of Washington.

(2) The term "public attorney" shall mean the prosecuting attorney of the county in which a grand jury or special grand jury is impaneled; the attorney general of the state of Washington when acting pursuant to RCW 10.27.070(9) and the special prosecutor appointed by the governor, pursuant to RCW 10.27.070(10), and their deputies or special deputies.

(3) The term "indictment" shall mean a written accusation found by a grand jury.

(4) The term "principal" shall mean any person whose conduct is being investigated by a grand jury or special inquiry judge.

(5) The term "witness" shall mean any person summoned to appear before a grand jury or special inquiry judge to answer questions or produce evidence.

(6) A "grand jury" consists of twelve persons, is impaneled by a superior court and constitutes a part of such court. The functions of a grand jury are to hear, examine and investigate evidence concerning criminal activity and corruption and to take action with respect to such evidence. The grand jury shall operate as a whole and not by committee.

(7) A "special inquiry judge" is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption. [1988 c 188 § 16; 1971 ex.s. c 67 § 2.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

10.27.030 Summoning grand jury. No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause. [1971 ex.s. c 67 § 3.]

10.27.040 Selection of grand jury members. Members of the grand jury shall be selected in the manner provided in chapter 2.36 RCW. [1988 c 188 § 17; 1971 ex.s. c 67 § 4.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

10.27.050 Special inquiry judge—Selection. In every county a superior court judge as designated by a majority of the judges shall be available to serve as a special inquiry judge to hear evidence concerning criminal activity and corruption. [1971 ex.s. c 67 § 5.]

10.27.060 Discharge of panel, juror—Grounds. Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

(1) At any time before a grand jury is sworn discharge the panel and summon another if it finds that the original panel does not substantially conform to the requirements of chapter 2.36 RCW; or

(2) At any time after a grand juror is drawn, refuse to swear him or her, or discharge him or her after he or she has been sworn, upon a finding that he or she is disqualified from service pursuant to chapter 2.36 RCW, or incapable of performing his or her duties because of bias or prejudice, or guilty of misconduct in the performance of his or her duties such as to impair the proper functioning of the grand jury. [2010 c 8 § 1018; 1971 ex.s. c 67 § 6.]

10.27.070 Oath—Officers—Witnesses. (1) When the grand jury is impaneled, the court shall appoint one of the jurors to be foreperson, and also another of the jurors to act as foreperson in case of the absence of the foreperson.

(2) The grand jurors must be sworn pursuant to the following oath: "You, as grand jurors for the county of,

do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge and you will submit things truly as they come to your knowledge, according to your charge the laws of this state and your understanding; you shall indict no person through envy, hatred, malice or political consideration; neither will you leave any person undicted through fear, favor, affection, reward or the hope thereof or political consideration. The counsel of the state, his or her advice, and that of your fellows you shall keep secret."

(3) After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this chapter, and the court may give the grand jurors any oral or written instructions, or both, relating to the proper performance of their duties at any time it deems necessary or appropriate.

(4) The court shall appoint a reporter to record the proceedings before the grand jury or special inquiry judge, and shall swear him or her not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090. In addition, the foreperson of the grand jury may, in his or her discretion, select one of the grand jurors to act as secretary to keep records of the grand jury's business.

(5) The court, whenever necessary, shall appoint an interpreter, and shall swear him or her not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(6) When a person held in official custody is a witness before a grand jury or special inquiry judge, a public servant, assigned to guard him or her during his or her appearance may accompany him or her. The court shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(7) Proceedings of a grand jury shall not be valid unless at least twelve of its members are present. The foreperson or acting foreperson of the grand jury shall conduct proceedings in an orderly manner and shall administer an oath or affirmation in the manner prescribed by law to any witness who shall testify before the grand jury.

(8) The legal advisers of a grand jury are the court and public attorneys, and a grand jury may not seek or receive legal advice from any other source. When necessary or appropriate, the court or public attorneys or both must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded by the reporter.

(9)(a) Upon request of the prosecuting attorney of the county in which a grand jury or special inquiry judge is impaneled, the attorney general shall assist such prosecuting attorney in attending such grand jury or special inquiry judge.

(b) Whenever directed by the court, the attorney general shall supersede the prosecuting attorney in attending the grand jury and in which event the attorney general shall be responsible for the prosecution of any indictment returned by the grand jury.

(c) When the attorney general is conducting a criminal investigation pursuant to powers otherwise granted to him or her, he or she shall attend all grand juries or special inquiry judges in relation thereto and shall prosecute any indictments returned by a grand jury.

(10) After consulting with the court and receiving its approval, the grand jury may request the governor to appoint a special prosecutor to attend the grand jury. The grand jury shall in the request nominate three persons approved by the court. From those nominated, the governor shall appoint a special prosecutor, who shall supersede the prosecuting attorney and the attorney general and who shall be responsible for the prosecution of any indictments returned by the grand jury attended by him or her.

(11) A public attorney shall attend the grand jurors when requested by them, and he or she may do so on his or her own motion within the limitations of RCW 10.27.020(2), 10.27.070(9) and 10.27.070(10) hereof, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He or she shall also, when requested by them, draft indictments and issue process for the attendance of witnesses.

(12) Subject to the approval of the court, the corporation counsel or city attorney for any city or town in the county where any grand jury has been convened may appear as a witness before the grand jury to advise the grand jury of any criminal activity or corruption within his or her jurisdiction. [2010 c 8 § 1019; 1971 ex.s. c 67 § 7.]

10.27.080 Persons authorized to attend—Restrictions on attorneys. No person shall be present at sessions of the grand jury or special inquiry judge except the witness under examination and his or her attorney, public attorneys, the reporter, an interpreter, a public servant guarding a witness who has been held in custody, if any, and, for the purposes provided for in RCW 10.27.170, any corporation counsel or city attorney. The attorney advising the witness shall only advise such witness concerning his or her right to answer or not answer any questions and the form of his or her answer and shall not otherwise engage in the proceedings. No person other than grand jurors shall be present while the grand jurors are deliberating or voting. Any person violating either of the above provisions may be held in contempt of court. [2010 c 8 § 1020; 1971 ex.s. c 67 § 8.]

10.27.090 Secrecy enjoined—Exceptions—Use and availability of evidence. (1) Every member of the grand jury shall keep secret whatever he, she, or any other grand juror has said, and how he, she, or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.

(2) No grand juror shall be permitted to state or testify in any court how he, she, or any other grand juror voted on any question before them or what opinion was expressed by himself, herself, or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his or her testimony given before the grand jury or

special inquiry judge by any person upon a charge against such person for perjury in giving his or her testimony or upon trial therefor, or when permitted by the court in furtherance of justice.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) When given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) When given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his or her family. The cost of any such transcript made available shall be borne by the applicant. [2010 c 8 § 1021; 1971 ex.s. c 67 § 9.]

10.27.100 Inquiry as to offenses—Duties—Investigation. The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he or she shall declare such a fact to his or her fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness. [2010 c 8 § 1022; 1971 ex.s. c 67 § 10.]

10.27.110 Duration of sessions—Extensions. The length of time which a grand jury may sit after being convened shall not exceed sixty days. Before expiration of the sixty day period and any extensions, and upon showing of good cause, the court may order the grand jury panel extended for a period not to exceed sixty days. [1971 ex.s. c 67 § 11.]

10.27.120 Self-incrimination—Right to counsel. Any individual called to testify before a grand jury or special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the grand jury or special inquiry judge, must be told of his or her privilege against self-incrimination. Such an individual has a right to representation by an attorney to advise him or her as to his or her rights, obligations, and duties before the grand jury or special inquiry judge, and must be informed of this right. The attorney may be present during all proceedings attended by his or her client unless immunity has been

granted pursuant to RCW 10.27.130. After immunity has been granted, such an individual may leave the grand jury room to confer with his or her attorney. [2010 c 8 § 1023; 1971 ex.s. c 67 § 12.]

10.27.130 Self-incrimination—Refusal to testify or give evidence—Procedure. If in any proceedings before a grand jury or special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he or she may be incriminated thereby, and if a public attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. The hearing shall be subject to the provisions of RCW 10.27.080 and 10.27.090, unless the witness shall request that the hearing be public.

If, but for this section, he or she would have been privileged to withhold the answer given or the evidence produced by him or her, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but he or she shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he or she has been ordered to testify pursuant to this section. He or she may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the grand jury. [2010 c 8 § 1024; 1971 ex.s. c 67 § 13.]

10.27.140 Witnesses—Attendance. (1) Except as provided in this section, no person has the right to appear as a witness in a grand jury or special inquiry judge proceeding.

(2) A public attorney may call as a witness in a grand jury or special inquiry judge proceeding any person believed by him or her to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his or her attendance and the production of evidence.

(3) The grand jury or special inquiry judge may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury or special inquiry judge desires to hear any such witness who was not called by a public attorney, it may direct a public attorney to issue and serve a subpoena upon such witness and the public attorney must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the public attorney may apply to the court which impeached the grand jury for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(4) The proceedings to summon a person and compel him or her to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in superior court criminal trials. [2010 c 8 § 1025; 1971 ex.s. c 67 § 14.]

10.27.150 Indictments—Issuance. After hearing, examining, and investigating the evidence before it, a grand

jury may, in its discretion, issue an indictment against a principal. A grand jury shall find an indictment only when from all the evidence at least three-fourths of the jurors are convinced that there is probable cause to believe a principal is guilty of a criminal offense. When an indictment is found by a grand jury the foreperson or acting foreperson shall present it to the court. [2010 c 8 § 1026; 1971 ex.s. c 67 § 15.]

10.27.160 Grand jury report. The grand jury may prepare its conclusions, recommendations and suggestions in the form of a grand jury report. Such report shall be released to the public only upon a determination by a majority of the judges of the superior court of the county court that (1) the findings in the report deal with matters of broad public policy affecting the public interest and do not identify or criticize any individual; (2) the release of the report would be consistent with the public interest and further the ends of justice; and (3) release of the report would not prejudice any pending criminal investigation or trial. [1971 ex.s. c 67 § 16.]

10.27.170 Special inquiry judge—Petition for order. When any public attorney, corporation counsel or city attorney has reason to suspect crime or corruption, within the jurisdiction of such attorney, and there is reason to believe that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may petition the judge designated as a special inquiry judge pursuant to RCW 10.27.050 for an order directed to such persons commanding them to appear at a designated time and place in said county and to then and there answer such questions concerning the suspected crime or corruption as the special inquiry judge may approve, or provide evidence as directed by the special inquiry judge. [1971 ex.s. c 67 § 17.]

10.27.180 Special inquiry judge—Disqualification from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena. [1971 ex.s. c 67 § 18.]

10.27.190 Special inquiry judge—Direction to public attorney for proceedings in another county—Procedure. Upon petition of a public attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge may direct the public attorney to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the public attorney's jurisdiction at the expense of that county. [1971 ex.s. c 67 § 19.]

Chapter 10.29 RCW

STATEWIDE SPECIAL INQUIRY JUDGE ACT

Sections

10.29.010	Short title.
10.29.020	Intent.
10.29.050	Powers and duties of statewide special inquiry judge.
10.29.060	Disclosures by witness—Penalty.
10.29.070	Rules.
10.29.100	Vacancy in office.
10.29.110	Duties of special prosecutor or designee.
10.29.120	Advising county prosecuting attorney—Filing and prosecution of informations—Expenses of prosecutions.
10.29.130	Disqualification of judge from subsequent proceedings.
10.29.900	Severability—1980 c 146.

Special inquiry judge: RCW 10.27.050, 10.27.170 through 10.27.190.

10.29.010 Short title. This chapter shall be known and may be cited as the Statewide Special Inquiry Judge Act. [1980 c 146 § 1.]

10.29.020 Intent. It is the intent of the legislature in enacting this chapter to strengthen and enhance the ability of the state to detect and eliminate organized criminal activity. [1980 c 146 § 2.]

10.29.050 Powers and duties of statewide special inquiry judge. A statewide special inquiry judge shall have the following powers and duties:

(1) To hear and receive evidence of crime and corruption.

(2) To appoint a reporter to record the proceedings; and to swear the reporter not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(3) Whenever necessary, to appoint an interpreter, and to swear him or her not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(4) When a person held in official custody is a witness before a statewide special inquiry judge, a public servant, assigned to guard him or her during his or her appearance may accompany him or her. The statewide special inquiry judge shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(5) To cause to be called as a witness any person believed by him or her to possess relevant information or knowledge. If the statewide special inquiry judge desires to hear any such witness who was not called by the special prosecutor, it may direct the special prosecutor to issue and serve a subpoena upon such witness and the special prosecutor must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the special prosecutor may apply to the statewide special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the statewide special inquiry judge may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(6) Upon a showing of good cause may make available any or all evidence obtained to any other public attorney, prosecuting attorney, city attorney, or corporation counsel upon proper application and with the concurrence of the special prosecutor. Any witness' testimony, given before a

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statewide special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the statewide special inquiry judge. The statewide special inquiry judge may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if doing so is in the furtherance of justice.

(7) Have authority to perform such other duties as may be required to effectively implement this chapter, in accord with rules adopted by the supreme court relating to these proceedings.

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a statewide special inquiry judge except when required by a court to disclose the testimony given before such statewide special inquiry judge in a subsequent criminal proceeding. [2010 c 8 § 1027; 1980 c 146 § 5.]

10.29.060 Disclosures by witness—Penalty. Any witness who shall disclose the fact that he or she has been called as a witness before a statewide special inquiry judge or who shall disclose the nature of the testimony given shall be guilty of a misdemeanor. [1980 c 146 § 6.]

10.29.070 Rules. The supreme court shall develop and adopt rules to govern the procedures of a statewide special inquiry judge proceeding including rules assuring the confidentiality of all proceedings, testimony, and the identity of persons called as witnesses. The adoption of such rules shall be subject to the approval of such rules by the senate and house judiciary committees. [1980 c 146 § 7.]

10.29.100 Vacancy in office. Whenever a statewide special inquiry judge or special prosecutor appointed under this chapter dies or in any other way is rendered incapable of continuing the duties of his or her office, a successor shall be appointed to serve for the remainder of the judge's or prosecutor's term in the manner provided for by *RCW 10.29.030 and 10.29.080 for the appointment of statewide special inquiry judges and special prosecutors. [1980 c 146 § 10.]

*Reviser's note: RCW 10.29.030 and 10.29.080 were repealed by 2009 c 560 § 24.

10.29.110 Duties of special prosecutor or designee. The special prosecutor or his or her designee shall:

(1) Attend all proceedings of the statewide special inquiry judge;

(2) Have the authority to issue subpoenas for witnesses statewide;

(3) Examine witnesses, present evidence, draft reports as directed by the statewide special inquiry judge, and draft and file informations under RCW 10.29.120. [2010 c 8 § 1028; 1980 c 146 § 11.]

10.29.120 Advising county prosecuting attorney—Filing and prosecution of informations—Expenses of prosecutions. (1) The special prosecutor shall advise the county prosecuting attorney in any affected county of the nature of the statewide special inquiry judge investigation

and of any informations arising from such proceedings unless such disclosures will create a substantial likelihood of a conflict of interest for the county prosecuting attorney.

(2) The special prosecutor may file and prosecute an information in the county where proper venue lies, after having advised the county prosecuting attorney as provided in this section and determined that such prosecuting attorney does not intend to do so, or pursuant to an agreement between them that the special prosecutor shall do so.

(3) Informations filed and prosecuted pursuant to this chapter shall meet the requirements of chapter 10.37 RCW.

(4) The expenses of prosecutions initiated and maintained by the special prosecutor shall be paid as part of the statewide special inquiry judge program as provided in *RCW 10.29.090. [1980 c 146 § 12.]

*Reviser's note: RCW 10.29.090 was repealed by 2009 c 560 § 24.

10.29.130 Disqualification of judge from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify, or provide evidence at such inquiry in response to an order, summons, or subpoena. [1980 c 146 § 13.]

10.29.900 Severability—1980 c 146. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 146 § 19.]

Chapter 10.31 RCW WARRANTS AND ARRESTS

Sections

10.31.030	Service—How—Warrant not in possession, procedure—Bail.
10.31.040	Officer may break and enter.
10.31.050	Officer may use force.
10.31.060	Arrest by telegraph or teletype.
10.31.100	Arrest without warrant.
10.31.110	Arrest—Individuals with mental disorders.

Rules of court: *Warrant upon indictment or information—CrR 2.2.*

Search and seizure: Chapter 10.79 RCW.

10.31.030 Service—How—Warrant not in possession, procedure—Bail. The officer making an arrest must inform the defendant that he or she acts under authority of a warrant, and must also show the warrant: PROVIDED, That if the officer does not have the warrant in his or her possession at the time of arrest he or she shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement: PROVIDED, FURTHER, That any officer making an arrest under this section shall, if the person arrested wishes to deposit bail, take such person directly and without delay before a judge or before an officer authorized to take the recognizance and justify and approve the bail, including the deposit of a sum of money equal to bail. Bail shall be the amount fixed by the warrant. Such judge or authorized officer shall hold bail for the legal authority within this state which issued such warrant if other than such arresting authority. [2010 c 8 § 1029; 1970 ex.s. c 49 § 3; 1891 c 28 § 43;

Code 1881 § 1030; 1873 p 229 § 210; 1854 p 114 § 74; RRS § 2083.]

Bail: Chapter 10.19 RCW.

Additional notes found at www.leg.wa.gov

10.31.040 Officer may break and enter. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other inclosure, if, after notice of his or her office and purpose, he or she be refused admittance. [2010 c 8 § 1030; Code 1881 § 1170; 1854 p 129 § 179; RRS § 2082.]

10.31.050 Officer may use force. If after notice of the intention to arrest the defendant, he or she either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [2010 c 8 § 1031; Code 1881 § 1031; 1873 p 229 § 211; 1854 p 114 § 75; RRS § 2084.]

10.31.060 Arrest by telegraph or teletype. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any justice of the supreme court, or any judge of either the court of appeals or superior court may indorse thereon an order signed by him or her and authorizing the service thereof by telegraph or teletype, and thereupon such warrant and order may be sent by telegraph or teletype to any marshal, sheriff, constable or police officer, and on the receipt of the telegraphic or teletype copy thereof by any such officer, he or she shall have the same authority and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly indorsed thereon, had been placed in his or her hands, and the said telegraphic or teletype copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his or her judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: PROVIDED, That the making of such order by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office or police agency from which the same is sent, and in telegraphing or teletyping the same, the original or the said certified copy may be used. [2010 c 8 § 1032; 1971 c 81 § 48; 1967 c 91 § 1; Code 1881 § 2357; 1865 p 75 § 16; RRS § 2081. Formerly RCW 10.31.060 through 10.31.090.]

10.31.100 Arrest without warrant. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor

or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (8) of this section if the police officer acts in good faith and without malice. [2010 c 274 § 201; 2006 c 138 § 23; 2000 c 119 § 4; 1999 c 184 § 14; 1997 c 66 § 10; 1996 c 248 § 4. Prior: 1995 c 246 § 20; 1995 c 184 § 1; 1995 c 93 § 1; prior: 1993 c 209

§ 1; 1993 c 128 § 5; 1988 c 190 § 1; prior: 1987 c 280 § 20; 1987 c 277 § 2; 1987 c 154 § 1; 1987 c 66 § 1; prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

Intent—2010 c 274: "The legislature intends to improve the lives of persons who suffer from the adverse effects of domestic violence and to require reasonable, coordinated measures to prevent domestic violence from occurring. The legislature intends to give law enforcement and the courts better tools to identify violent perpetrators of domestic violence and hold them accountable. The legislature intends to: Increase the safety afforded to individuals who seek protection of public and private agencies involved in domestic violence prevention; improve the ability of agencies to address the needs of victims and their children and the delivery of services; upgrade the quality of treatment programs; and enhance the ability of the justice system to respond quickly and fairly to domestic violence. In order to improve the lives of persons who have, or may suffer, the effects of domestic violence the legislature intends to achieve more uniformity in the decision-making processes at public and private agencies that address domestic violence by reducing inconsistencies and duplications allowing domestic violence victims to achieve safety and stability in their lives." [2010 c 274 § 101.]

Short title—2006 c 138: See RCW 7.90.900.

Arrest procedure involving traffic violations: Chapter 46.64 RCW.

Domestic violence, peace officers—Immunity: RCW 26.50.140.

Uniform Controlled Substances Act: Chapter 69.50 RCW.

Additional notes found at www.leg.wa.gov

10.31.110 Arrest—Individuals with mental disorders. (1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder, the arresting officer may:

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

(b) Take the individual to a triage facility as defined in RCW 71.05.020. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

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

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

(2) If the individual is released to the community, the mental health provider shall inform the arresting officer of the release within a reasonable period of time after the release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

(4) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(5) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

(6) The police officer is immune from liability for any good faith conduct under this section. [2011 c 305 § 7; 2011 c 148 § 3; 2007 c 375 § 2.]

Reviser's note: This section was amended by 2011 c 148 § 3 and by 2011 c 305 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2011 c 305: See note following RCW 74.09.295.

Certification of triage facilities—Effective date—2011 c 148: See notes following RCW 71.05.020.

Findings—Purpose—2007 c 375: "The legislature finds that *RCW 10.77.090 contains laws relating to three discrete subjects. Therefore, one purpose of this act is to reorganize some of those laws by creating new sections in the Revised Code of Washington that clarify and identify these discrete subjects.

The legislature further finds that there are disproportionate numbers of individuals with mental illness in jail. The needs of individuals with mental illness and the public safety needs of society at large are better served when individuals with mental illness are provided an opportunity to obtain treatment and support." [2007 c 375 § 1.]

***Reviser's note:** RCW 10.77.090 was repealed by 2007 c 375 § 17. For later enactment, see RCW 10.77.084, 10.77.086, and 10.77.088.

Construction—2007 c 375: "Nothing in this act shall be construed to alter or diminish a prosecutor's inherent authority to divert or pursue the prosecution of criminal offenders." [2007 c 375 § 16.]

Severability—2007 c 375: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 375 § 18.]

Chapter 10.34 RCW FUGITIVES OF THIS STATE

Sections

10.34.010	Officer may arrest defendant in any county.
10.34.020	Escape—Retaking prisoner—Authority.
10.34.030	Escape—Retaking in foreign state—Extradition agents.

Escape: Chapter 9A.76 RCW.

Extradition and fresh pursuit: Chapter 10.88 RCW.

Return of parole violators from another state: RCW 9.95.280 through 9.95.300.

10.34.010 Officer may arrest defendant in any county. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his or her

own county. [2010 c 8 § 1033; Code 1881 § 1922; 1873 p 394 § 220; 1854 p 107 § 28; RRS § 1950.]

10.34.020 Escape—Retaking prisoner—Authority. If a person arrested escape or be rescued, the person from whose custody he or she made his or her escape, or was rescued, may immediately pursue and retake him or her at any time, and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest. [2010 c 8 § 1034; Code 1881 § 1032; 1873 p 229 § 212; 1854 p 114 § 76; RRS § 2085.]

10.34.030 Escape—Retaking in foreign state—Extradition agents. The governor may appoint agents to make a demand upon the executive authority of any state or territory for the surrender of any fugitive from justice, or any other person charged with a felony or any other crime in this state. Whenever an application shall be made to the governor for the appointment of an agent he or she may require the official submitting the same to provide whatever information is necessary prior to approval of the application. [2010 c 8 § 1035; 1993 c 442 § 1; 1967 c 91 § 2; 1891 c 28 § 98; Code 1881 § 971; 1873 p 217 § 157; 1854 p 102 § 5; RRS § 2241.]

Additional notes found at www.leg.wa.gov

Chapter 10.37 RCW

ACCUSATIONS AND THEIR REQUISITES

Sections

- 10.37.010 Pleadings required in criminal proceedings.
- 10.37.015 Charge by information or indictment—Exceptions.
- 10.37.040 Indictment—Form.
- 10.37.050 Indictment or information—Sufficiency.
- 10.37.052 Indictment or information—Requisites.
- 10.37.054 Indictment or information—Certainty.
- 10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial.
- 10.37.060 Indictment or information—Separation into counts—Consolidation.
- 10.37.070 Animals—Description of.
- 10.37.080 Forgery—Description of instrument.
- 10.37.090 Injury to person or intention concerning.
- 10.37.100 Judgment, how pleaded.
- 10.37.110 Larceny or embezzlement—Specification.
- 10.37.130 Obscene literature—Description.
- 10.37.140 Perjury—Subornation of perjury—Description of matter.
- 10.37.150 Presumptions of law need not be stated.
- 10.37.160 Statute—Exact words need not be used.
- 10.37.170 Statute, private—Description.
- 10.37.190 Words and phrases—How used.

Rules of court: *Rights of dependents—CrR 3.1 through 3.6.*
Ownership of property, proof of: RCW 10.58.060.

10.37.010 Pleadings required in criminal proceedings. No pleading other than an indictment, information or complaint shall be required on the part of the state in any criminal proceedings in any court of the state, and when such pleading is in the manner and form as provided by law the defendant shall be required to plead thereto as prescribed by law without any further action or proceedings of any kind on the part of the state. [1925 ex.s. c 150 § 3; RRS § 2050-1. FORMER PARTS OF SECTION: (i) 1927 c 103 § 1; Code 1881 § 764; RRS § 2023, now codified as RCW 10.37.015. (ii) 1909 c 87 § 1; 1891 c 117 § 1; 1890 p 100 § 1; RRS § 2024, now codified as RCW 10.37.026. (iii) 1891 c 28 § 19;

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Code 1881 § 1003; 1873 p 224 § 186; 1869 p 240 § 181; RRS § 2054, now codified as RCW 10.37.025.]

10.37.015 Charge by information or indictment—Exceptions. (1) No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial, except as provided in subsection (2) of this section.

(2) Violations of RCW 46.20.342(1)(c)(iv) may be required by the prosecuting attorney to be referred to his or her office for consideration of filing an information or for entry into a precharge diversion program. [2011 c 46 § 1; 1987 c 202 § 167; 1927 c 103 § 1; Code 1881 § 764; RRS § 2023. Formerly RCW 10.37.010, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.37.040 Indictment—Form. The indictment may be substantially in the following form:

State of Washington v. A. B.	}	Superior Court of the State of Washington for the County of
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A. B. is accused by the grand jury of the, by this indictment, of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law], committed as follows:

The said A. B. on the day of, 19. . ., in the county of, aforesaid, [here set forth the act charged as a crime.]

Dated at, in the county aforesaid, the day of, A.D. 19. . .

(Signed) C. D., Prosecuting Attorney.

(Indorsed) A true bill.

(Signed) E. F., Foreperson of the Grand Jury.

[2010 c 8 § 1036; 1891 c 28 § 21; Code 1881 § 1005; 1873 p 225 § 188; 1869 p 240 § 183; RRS § 2056.]

10.37.050 Indictment or information—Sufficiency. The indictment or information is sufficient if it can be understood therefrom—

- (1) That it is entitled in a court having authority to receive it;
- (2) That it was found by a grand jury or prosecuting attorney of the county in which the court was held;
- (3) That the defendant is named, or if his or her name cannot be discovered, that he or she is described by a fictitious name or by reference to a unique genetic sequence of deoxyribonucleic acid, with the statement that his or her real name is unknown;
- (4) That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act,

though done without the county in which the court is held, is triable therein;

(5) That the crime was committed at some time previous to the finding of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor;

(6) That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

(7) The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case. [2010 c 8 § 1037; 2000 c 92 § 3; 1891 c 28 § 29; Code 1881 § 1014; 1873 p 226 § 197; 1869 p 242 § 192; RRS § 2065. FORMER PARTS OF SECTION: (i) 1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055, now codified as RCW 10.37.052. (ii) 1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1854 p 112 § 61; 1869 p 241 § 184; RRS § 2057, now codified as RCW 10.37.054. (iii) 1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066, now codified as RCW 10.37.056.]

Intent—2000 c 92: See note following RCW 10.73.170.

10.37.052 Indictment or information—Requisites.

The indictment or information must contain—

(1) The title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties;

(2) A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. [1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055. Formerly RCW 10.37.050, part.]

10.37.054 Indictment or information—Certainty.

The indictment or information must be direct and certain as it regards:

(1) The party charged;

(2) The crime charged; and

(3) The particular circumstances of the crime charged, when they are necessary to constitute a complete crime. [1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1869 p 241 § 184; 1854 p 112 § 61; RRS § 2057. Formerly RCW 10.37.050, part.]

10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial. No indictment or information is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections:

(1) For want of an allegation of the time or place of any material fact, when the time and place have been once stated;

(2) For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state;"

(3) For the omission to allege that the grand jury was impaneled, sworn, or charged;

(4) For any surplusage or repugnant allegation or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor

(5) For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066. Formerly RCW 10.37.050, part.]

Ownership of property, proof of: RCW 10.58.060.

10.37.060 Indictment or information—Separation into counts—Consolidation. When there are several charges against any person, or persons, for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments or informations the whole may be joined in one indictment, or information, in separate counts; and, if two or more indictments are found, or two or more informations filed, in such cases, the court may order such indictments or informations to be consolidated. [1925 ex.s. c 109 § 1; 1891 c 28 § 24; Code 1881 § 1008; 1873 p 225 § 191; 1869 p 241 § 186; RRS § 2059.]

10.37.070 Animals—Description of. When the crime involves the taking of or injury to an animal the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class. [1891 c 28 § 26; Code 1881 § 1011; 1873 p 226 § 194; 1869 p 241 § 189; RRS § 2062.]

Crimes relating to animals: Chapter 9.08 RCW.

Larceny: Chapter 9A.56 RCW.

10.37.080 Forgery—Description of instrument.

When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [1891 c 28 § 35; Code 1881 § 1020; 1873 p 227 § 203; 1854 p 113 § 68; RRS § 2071.]

Forgery: Chapter 9A.60 RCW.

10.37.090 Injury to person or intention concerning.

When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. [Code 1881 § 1010; 1873 p 226 § 193; 1869 p 241 § 188; RRS § 2061.]

10.37.100 Judgment, how pleaded. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. [1891

c 28 § 32; Code 1881 § 1017; 1873 p 227 § 200; 1869 p 242 § 195; 1854 p 112 § 65; RRS § 2068.]

10.37.110 Larceny or embezzlement—Specification.

In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination or kind thereof. [1891 c 28 § 38; Code 1881 § 1023; RRS § 2074.]

Larceny: Chapter 9A.56 RCW.

Ownership of property, proof of: RCW 10.58.060.

10.37.130 Obscene literature—Description.

An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [1891 c 28 § 39; Code 1881 § 1024; RRS § 2075.]

Obscenity: Chapter 9.68 RCW.

10.37.140 Perjury—Subornation of perjury—

Description of matter. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [1891 c 28 § 36; Code 1881 § 1021; 1873 p 228 § 204; 1869 p 243 § 199; 1854 p 112 § 67; RRS § 2072.]

Perjury: Chapter 9A.72 RCW.

10.37.150 Presumptions of law need not be stated.

Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information. [1891 c 28 § 31; Code 1881 § 1016; 1873 p 227 § 199; 1869 p 242 § 194; RRS § 2067.]

10.37.160 Statute—Exact words need not be used.

Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. [1891 c 28 § 28; Code 1881 § 1013; 1873 p 226 § 196; 1869 p 241 § 191; RRS § 2064.]

10.37.170 Statute, private—Description.

In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. [1891 c 28 § 33; Code 1881 §

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1018; 1873 p 227 § 201; 1869 p 243 § 196; 1854 p 112 § 66; RRS § 2069.]

10.37.190 Words and phrases—How used.

The words used in an indictment or information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [1891 c 28 § 27; Code 1881 § 1012; 1873 p 227 § 195; 1869 p 241 § 190; RRS § 2063.]

**Chapter 10.40 RCW
ARRAIGNMENT**

Sections

10.40.050	Entry and use of true name.
10.40.060	Pleading to arraignment.
10.40.070	Motion to set aside indictment.
10.40.075	Motion to set aside indictment—Grounds not allowed, when.
10.40.090	Sustaining motion—Effect of.
10.40.100	Overruling motion—Pleading over.
10.40.110	Demurrer to indictment or information.
10.40.120	Sustaining demurrer—When final.
10.40.125	Sustaining demurrer, etc.—When not final.
10.40.140	Overruling demurrer—Pleading over.
10.40.170	Plea of guilty.
10.40.180	Plea of not guilty.
10.40.190	Refusal to answer.
10.40.200	Deportation of aliens upon conviction—Advisement—Legislative intent.

Rules of court: Arraignment—CrR 4.1.

10.40.050 Entry and use of true name. If he or she alleges that another name is his or her true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him or her by that name, referring also to the name by which he or she is indicted or informed against. [2010 c 8 § 1038; 1891 c 28 § 49; Code 1881 § 1065; 1873 p 232 § 227; 1854 p 116 § 91; RRS § 2097.]

Action on discovery of true name: RCW 10.46.060.

10.40.060 Pleading to arraignment. In answer to the arraignment, the defendant may move to set aside the indictment or information, or he or she may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he or she demands it. [2010 c 8 § 1039; 1891 c 28 § 50; Code 1881 § 1045; RRS § 2098.]

10.40.070 Motion to set aside indictment. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:

(1) When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law;

(2) If the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [1983 c 3 § 12; 1957 c 10 § 1; Code 1881 § 1046; RRS § 2099. FORMER PART OF SECTION: Code 1881 § 1047; RRS § 2100, now codified as RCW 10.40.075.]

10.40.075 Motion to set aside indictment—Grounds not allowed, when. The ground of the motion to set aside the

indictment mentioned in the fourth subdivision of RCW 10.40.070 is not allowed to a defendant who has been held to answer before indictment. [Code 1881 § 1047; RRS § 2100. Formerly RCW 10.40.070, part.]

10.40.090 Sustaining motion—Effect of. An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense. [1891 c 28 § 54; Code 1881 § 1050; RRS § 2104.]

10.40.100 Overruling motion—Pleading over. If the motion to set aside the indictment [or information] be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. [1891 c 28 § 52; Code 1881 § 1048; RRS § 2102.]

10.40.110 Demurrer to indictment or information. The defendant may demur to the indictment or information when it appears upon its face either—

- (1) That it does not substantially conform to the requirements of this code;
- (2) [That] more than one crime is charged;
- (3) That the facts charged do not constitute a crime;
- (4) That the indictment or information contains any matter which, if true, would constitute a defense or other legal bar to the action. [1891 c 28 § 55; Code 1881 § 1051; RRS § 2105.]

10.40.120 Sustaining demurrer—When final. If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged. [1891 c 28 § 56; Code 1881 § 1052; RRS § 2106. FORMER PART OF SECTION: 1891 c 28 § 61; Code 1881 § 1060; RRS § 2114, now codified as RCW 10.40.125.]

10.40.125 Sustaining demurrer, etc.—When not final. The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense. [1891 c 28 § 61; Code 1881 § 1060; RRS § 2114. Formerly RCW 10.40.120, part.]

10.40.140 Overruling demurrer—Pleading over. If the demurrer is overruled the defendant has a right to put in a plea. If he or she fails to do so, judgment may be rendered against him or her on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [2010 c 8 § 1040; Code 1881 § 1053; RRS § 2107.]

10.40.170 Plea of guilty. The plea of guilty can only be put in by the defendant himself or herself in open court. [2010 c 8 § 1041; Code 1881 § 1056; RRS § 2110. FORMER PART OF SECTION: Code 1881 § 1057; RRS § 2111, now codified as RCW 10.40.175.]

10.40.180 Plea of not guilty. The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence

under it, except a former conviction or acquittal. [1891 c 28 § 59; Code 1881 § 1058; RRS § 2112.]

10.40.190 Refusal to answer. If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court. [1891 c 28 § 62; Code 1881 § 1061; 1873 p 232 § 224; 1854 p 116 § 88; RRS § 2115.]

10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent. (1) The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.

(2) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. A defendant signing a guilty plea statement containing the advisement required by this subsection shall be presumed to have received the required advisement. If, after September 1, 1983, the defendant has not been advised as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty and enter a plea of not guilty. Absent a written acknowledgment by the defendant of the advisement required by this subsection, the defendant shall be presumed not to have received the required advisement.

(3) With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement required by subsection (2) of this section should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. [1983 c 199 § 1.]

Notice to courts—Rules—Forms: "The administrative office of the courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the administrative office of the courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200." [2005 c 282 § 21; 1983 c 199 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 10.43 RCW

FORMER ACQUITTAL OR CONVICTION

Sections

- 10.43.020 Offense embraces lower degree and included offenses.
 10.43.030 Conviction or acquittal in other county.
 10.43.040 Foreign conviction or acquittal.
 10.43.050 Acquittal, when a bar.

Discharge of codefendant as bar to further prosecution: RCW 10.46.110.

Double jeopardy: State Constitution Art. 1 § 9.

10.43.020 Offense embraces lower degree and included offenses. When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. [1891 c 28 § 74; Code 1881 § 1096; 1873 p 238 § 257; 1854 p 120 § 121; RRS § 2166.]

Bar as to prosecution for same crime in another degree, or attempt: RCW 10.43.050.

10.43.030 Conviction or acquittal in other county. Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 20; RRS § 2272.]

10.43.040 Foreign conviction or acquittal. Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he or she is upon trial, such former acquittal or conviction is a sufficient defense. Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or country based upon the same act or omission. [2010 c 8 § 1042; 1999 c 141 § 1; 1909 c 249 § 19; RRS § 2271.]

10.43.050 Acquittal, when a bar. No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he or she cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. [2010 c 8 § 1043; 1909 c 249 § 64; Code 1881 § 769; RRS § 2316.]

Offense embraces lower degree and included offenses: RCW 10.43.020.

Ownership of property—Proof of: RCW 10.58.060.

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Chapter 10.46 RCW

SUPERIOR COURT TRIAL

Sections

- 10.46.020 Trial docket.
 10.46.060 True name inserted in proceedings.
 10.46.070 Conduct of trial—Generally.
 10.46.080 Continuances.
 10.46.085 Continuances not permitted in certain cases.
 10.46.110 Discharging defendant to give evidence.
 10.46.190 Liability of convicted person for costs—Jury fee.
 10.46.200 Costs allowed to acquitted or discharged defendant.
 10.46.210 Taxation of costs on acquittal or discharge—Generally—Fruitless complaints.
 10.46.220 Cost bills in felony cases—Certification.
 10.46.230 Cost bills in felony cases—Payment.

Criminal rules for superior court: Rules of court: Superior Court Criminal Rules (CrR).

Superior court rules: State Constitution Art. 4 § 24.

10.46.020 Trial docket. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail; and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. [1891 c 28 § 65; Code 1881 § 1044; 1873 p 231 § 222; 1854 p 115 § 86; RRS § 2134.]

10.46.060 True name inserted in proceedings. When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his or her true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his or her being indicted or informed against by the name mentioned in the indictment or information. [2010 c 8 § 1044; 1891 c 28 § 23; Code 1881 § 1007; 1873 p 225 § 190; 1869 p 241 § 185; RRS § 2058.]

True name: RCW 10.40.050.

10.46.070 Conduct of trial—Generally. The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions. [1891 c 28 § 70; Code 1881 § 1088; 1873 p 237 § 249; 1854 p 119 § 111; RRS § 2158. FORMER PART OF SECTION: 1891 c 28 § 66, part; Code 1881 § 1078; 1873 p 236 § 239; 1854 p 118 § 101; RRS § 2137, part, now codified as RCW 10.49.020.]

Rules of court: This section superseded, in part, by CrR 6. See comment preceding CrR 6.1.

10.46.080 Continuances. A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance

shall not be granted. [Code 1881 § 1077; 1877 p 206 § 7; RRS § 2135.]

10.46.085 Continuances not permitted in certain cases. When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or 9A.44 RCW, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court within its discretion finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim. [1989 c 332 § 7.]

Finding—1989 c 332: "The legislature finds that treatment of the emotional problems of child sexual abuse victims may be impaired by lengthy delay in trial of the accused and the resulting delay in testimony of the child victim. The trauma of the abusive incident is likely to be exacerbated by requiring testimony from a victim who has substantially completed therapy and is forced to relive the incident. The legislature finds that it is necessary to prevent, to the extent reasonably possible, lengthy and unnecessary delays in trial of a person charged with abuse of a minor." [1989 c 332 § 6.]

10.46.110 Discharging defendant to give evidence. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his or her defense, direct any defendant to be discharged, that he or she may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him or her on his or her defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense. [2010 c 8 § 1045; Code 1881 § 1092; 1873 p 237 § 253; 1854 p 120 § 117; RRS § 2162.]

Conviction or acquittal—Several defendants: RCW 10.61.035.

10.46.190 Liability of convicted person for costs—Jury fee. Every person convicted of a crime or held to bail to keep the peace shall be liable to all the costs of the proceedings against him or her, including, when tried by a jury in the superior court or before a committing magistrate, a jury fee as provided for in civil actions for which judgment shall be rendered and collected. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk and applied as the jury fee in civil cases is applied. [2005 c 457 § 12; 1977 ex.s. c 248 § 1; 1977 ex.s. c 53 § 1; 1961 c 304 § 8; Code 1881 § 2105; 1869 p 418 § 3; RRS § 2227.]

Intent—2005 c 457: See note following RCW 43.08.250.

Disposition of fines and costs: Chapter 10.82 RCW.

Jury

fees: RCW 4.44.110, 36.18.020.

in district court: RCW 10.04.050.

10.46.200 Costs allowed to acquitted or discharged defendant. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him or her, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he or she was in custody, but in

every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases. [2010 c 8 § 1046; Code 1881 § 1168; 1877 p 207 § 10; 1854 p 129 § 177; RRS § 2236.]

10.46.210 Taxation of costs on acquittal or discharge—Generally—F frivolous complaints. When any person shall be brought before a court or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable, but if the court or other magistrate trying said charge, shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law. [1987 c 202 § 168; Code 1881 § 2103; 1869 p 418 § 1; RRS § 2225.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.46.220 Cost bills in felony cases—Certification. In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof, as is allowable by law. The clerk of the superior court shall thereupon, under his or her hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of cause, and shall transmit one to the administrator for the courts and one to the county auditor of the county in which said felony was committed. [2010 c 8 § 1047; 1979 c 129 § 1; 1883 p 35 § 1; Code 1881 § 2106; RRS § 2228.]

10.46.230 Cost bills in felony cases—Payment. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the administrator for the courts shall examine and audit said bill and allow the payment by the state of statutorily required witness fees in cases where conviction of a felony is obtained and the defendant is sentenced to pay a fine or is given a prison sentence even if the sentence is deferred or suspended. Payment shall be allowed by the administrator for the courts in such cases even when the conviction is subsequently reversed or if a new trial is granted. [1979 c 129 § 2; 1883 p 35 § 1; Code 1881 § 2107; 1873 p 250 § 316; RRS § 2229.]

Chapter 10.52 RCW
WITNESSES—GENERALLY

Sections

- 10.52.040 Compelling witness to attend and testify—Accused as witness.
 10.52.060 Confrontation of witnesses.
 10.52.090 Incriminating testimony not to be used.
 10.52.100 Identity of child victims of sexual assault not to be disclosed.

Discharging defendant to give evidence: RCW 10.46.110.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witnesses: Rules of court: ER 610, CrR 6.12, CrRLJ 6.12.

10.52.040 Compelling witness to attend and testify—Accused as witness. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney or defense counsel, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury. In default of such recognizance, or in the event that surety is required and has not been obtained, the court shall require the appearance of the witness before the court and shall appoint counsel for the witness if he is indigent and then shall determine that the testimony of the witness would be material to either the prosecution or the defendant and that the witness would not attend the trial of the matter unless detained and, therefore, the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial in which the witness is to testify: PROVIDED, That each witness detained for failure to obtain surety shall be paid, in addition to witness fees for actual appearance in court, for each day of his detention a sum equal to the daily jury fee paid to a juror serving in a superior court; and each witness in breach of recognizance and who is detained therefor shall be paid, in addition to witness fees for actual appearance in court, the sum of one dollar for each day of his detention. Any such witness shall be provided food and lodging while so detained. Any person accused of any crime in this state, by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: PROVIDED, That nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case. [1984 c 76 § 17; 1969 ex.s. c 143 § 1; 1915 c 83 § 1; 1891 c 28 § 69; Code 1881 § 1067; 1873 p 233 § 229; 1871 p 105 § 2; 1854 p 116 § 93; RRS § 2148. Formerly RCW 10.52.040, 10.52.050, 10.52.070, and 10.52.080.]

Rules of court: See CrR 6.13, 6.14.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

10.52.060 Confrontation of witnesses. Every person accused of crime shall have the right to meet the witnesses produced against him or her face to face: PROVIDED, That

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whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his or her counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case. [2010 c 8 § 1048; 1909 c 249 § 54; RRS § 2306. Prior: Code 1881 § 765; 1873 p 180 § 2; 1869 p 198 § 2; 1859 p 104 § 2.]

Reviser's note: Caption for 1909 c 249 § 54 reads as follows: "SEC. 54. WITNESSES."

Rights of accused persons: State Constitution Art. 1 § 22 (Amendment 10).

10.52.090 Incriminating testimony not to be used. In every case where it is provided in *this act that a witness shall not be excused from giving testimony tending to criminate himself or herself, no person shall be excused from testifying or producing any papers or documents on the ground that his or her testimony may tend to criminate or subject him or her to a penalty or forfeiture; but he or she shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he or she shall so testify, except for perjury or offering false evidence committed in such testimony. [2010 c 8 § 1049; 1909 c 249 § 39; RRS § 2291.]

Rules of court: *Ordering immunity from prosecution—Incriminating testimony not to be used—CrR 6.14.*

***Reviser's note:** For meaning of "this act," see note following RCW 9.01.120.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

Witness not excused from giving testimony tending to incriminate himself in crimes concerning bribery: RCW 9.18.080.

10.52.100 Identity of child victims of sexual assault not to be disclosed. Child victims of sexual assault who are under the age of eighteen, have a right not to have disclosed to the public or press at any court proceeding involved in the prosecution of the sexual assault, the child victim's name, address, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. The court shall ensure that information identifying the child victim is not disclosed to the press or the public and that in the event of any improper disclosure the court shall make all necessary orders to restrict further dissemination of identifying information improperly obtained. Court proceedings include but are not limited to pretrial hearings, trial, sentencing, and appellate proceedings. The court shall also order that any portion of any court records, transcripts, or recordings of court proceedings that contain information identifying the child victim shall be sealed and not open to public inspection unless those identifying portions are deleted from the documents or tapes. [1992 c 188 § 9.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Chapter 10.55 RCW
WITNESSES OUTSIDE THE STATE
(UNIFORM ACT)

Sections

10.55.010	Definitions.
10.55.020	Summoning witness in this state to testify in another state.
10.55.060	Witness from another state summoned to testify in this state.
10.55.100	Exemption of witness from arrest and service of process.
10.55.110	Uniformity of interpretation.
10.55.120	Short title.
10.55.130	Severability—1943 c 218.

10.55.010 Definitions. "Witness" as used in this chapter shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness. [1943 c 218 § 1; Rem. Supp. 1943 § 2150-1.]

10.55.020 Summoning witness in this state to testify in another state. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certified under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his or her presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him or her protection from arrest and the service of civil and criminal process, he or she shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence and of any other state through which the witness may be required to travel by ordinary course of travel, at a time and place specified in the certificate. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his or her attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him or her for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or sum-

mons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [2010 c 8 § 1050; 1943 c 218 § 2; Rem. Supp. 1943 § 2150-2. Formerly RCW 10.55.020, 10.55.030, 10.55.040, and 10.55.050.]

10.55.060 Witness from another state summoned to testify in this state. If any person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness either for the prosecution or for the defense, in a criminal action pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his or her attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he or she shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [2010 c 8 § 1051; 1943 c 218 § 3; Rem. Supp. 1943 § 2150-3. Formerly RCW 10.55.060, 10.55.070, 10.55.080, and 10.55.090.]

10.55.100 Exemption of witness from arrest and service of process. If a person comes into this state in obedience to a summons directing him or her to attend and testify in this state he or she shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he or she shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into this state

under the summons. [2010 c 8 § 1052; 1943 c 218 § 4; Rem. Supp. 1943 § 2150-4.]

10.55.110 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [1943 c 218 § 5; Rem. Supp. 1943 § 2150-5.]

10.55.120 Short title. This chapter may be cited as "Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings." [1943 c 218 § 6; Rem. Supp. 1943 § 2150-6.]

10.55.130 Severability—1943 c 218. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1943 c 218 § 7; Rem. Supp. 1943 § 2150-7.]

Chapter 10.58 RCW EVIDENCE

Sections

10.58.010	Rules—Generally.
10.58.020	Presumption of innocence—Conviction of lowest degree, when.
10.58.030	Confession as evidence.
10.58.035	Statement of defendant—Admissibility.
10.58.038	Polygraph examinations—Victims of alleged sex offenses.
10.58.040	Intent to defraud.
10.58.060	Ownership—Proof of.
10.58.080	View of place of crime permissible.
10.58.090	Sex offenses—Admissibility.

Evidence

generally: Title 5 RCW.

material to homicide, search and seizure: RCW 10.79.015.

10.58.010 Rules—Generally. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions. [Code 1881 § 1071; 1873 p 234 § 233; 1854 p 117 § 97; RRS § 2152.]

10.58.020 Presumption of innocence—Conviction of lowest degree, when. Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him or her, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest. [2010 c 8 § 1053; 1909 c 249 § 56; 1891 c 28 § 91; Code 1881 § 767; 1854 p 76 § 3; RRS § 2308. Formerly RCW 10.58.020 and 10.61.020.]

Conviction of attempts or lesser or included crimes: RCW 10.61.003, 10.61.006, 10.61.010.

10.58.030 Confession as evidence. The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him or her, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony. [2010

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c 8 § 1054; Code 1881 § 1070; 1873 p 234 § 232; 1854 p 117 § 96; RRS § 2151.]

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

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

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

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

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

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

(3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.

(4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict. [2003 c 179 § 1.]

10.58.038 Polygraph examinations—Victims of alleged sex offenses. A law enforcement officer, prosecuting attorney, or other government official may not ask or require a victim of an alleged sex offense to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the offense. The refusal of a victim to submit to a polygraph examination or other truth telling device shall not by itself prevent the investigation, charging, or prosecution of the offense. For the purposes of this section, "sex offense" is any offense under chapter 9A.44 RCW. [2007 c 202 § 1.]

10.58.040 Intent to defraud. Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever. [1909 c 249 § 40; RRS § 2292.]

10.58.060 Ownership—Proof of. In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the

general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. [Code 1881 § 963; 1854 p 99 § 133; RRS § 2156.]

Indictment or information, certain defects or imperfections deemed immaterial: RCW 10.37.056.

10.58.080 View of place of crime permissible. The court may order a view by any jury impaneled to try a criminal case. [Code 1881 § 1090; 1873 p 237 § 251; 1854 p 120 § 115; RRS § 2160.]

10.58.090 Sex Offenses—Admissibility. (1) In a criminal action in which the defendant is accused of a sex offense, evidence of the defendant's commission of another sex offense or sex offenses is admissible, notwithstanding Evidence Rule 404(b), if the evidence is not inadmissible pursuant to Evidence Rule 403.

(2) In a case in which the state intends to offer evidence under this rule, the attorney for the state shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) This section shall not be construed to limit the admission or consideration of evidence under any other evidence rule.

(4) For purposes of this section, "sex offense" means:

(a) Any offense defined as a sex offense by RCW 9.94A.030;

(b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree); and

(c) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes).

(5) For purposes of this section, uncharged conduct is included in the definition of "sex offense."

(6) When evaluating whether evidence of the defendant's commission of another sexual offense or offenses should be excluded pursuant to Evidence Rule 403, the trial judge shall consider the following factors:

(a) The similarity of the prior acts to the acts charged;

(b) The closeness in time of the prior acts to the acts charged;

(c) The frequency of the prior acts;

(d) The presence or lack of intervening circumstances;

(e) The necessity of the evidence beyond the testimonies already offered at trial;

(f) Whether the prior act was a criminal conviction;

(g) Whether the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; and

(h) Other facts and circumstances. [2008 c 90 § 2.]

Purpose—Exception to evidence rule—2008 c 90: "In Washington, the legislature and the courts share the responsibility for enacting rules of evidence. The court's authority for enacting rules of evidence arises from a statutory delegation of that responsibility to the court and from Article IV, section 1 of the state Constitution. *State v. Fields*, 85 Wn.2d 126, 129, 530 P.2d 284 (1975).

The legislature's authority for enacting rules of evidence arises from

the Washington supreme court's prior classification of such rules as substantive law. See *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law").

The legislature adopts this exception to Evidence Rule 404(b) to ensure that juries receive the necessary evidence to reach a just and fair verdict." [2008 c 90 § 1.]

Application—2008 c 90 § 2: "Section 2 of this act applies to any case that is tried on or after its adoption." [2008 c 90 § 3.]

Reviser's note: Section 2, chapter 90, Laws of 2008 was approved by the legislature on March 20, 2008, with an effective date of June 12, 2008.

Chapter 10.61 RCW VERDICTS

Sections

10.61.003 Degree offenses—Inferior degree—Attempt.

10.61.006 Other cases—Included offenses.

10.61.010 Conviction of lesser crime.

10.61.035 Conviction or acquittal—Several defendants.

10.61.060 Reconsideration of verdict.

Rules of court: Verdicts—CrR 6.16.

Former acquittal or conviction—Offense embraces other degrees and included offenses: RCW 10.43.020, 10.43.050.

10.61.003 Degree offenses—Inferior degree—Attempt. Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense. [1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167. Formerly RCW 10.61.010, part.] [SLC-RO-11]

Where doubt as to degree, conviction of lowest: RCW 10.58.020.

10.61.006 Other cases—Included offenses. In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he or she is charged in the indictment or information. [2010 c 8 § 1055; 1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168. Formerly RCW 10.61.010, part.] [SLC-RO-11]

10.61.010 Conviction of lesser crime. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. [1909 c 249 § 11; RRS § 2263. FORMER PARTS OF SECTION: (i) 1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167, now codified as RCW 10.61.003. (ii) 1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168, now codified as RCW 10.61.006.] [SLC-RO-11]

10.61.035 Conviction or acquittal—Several defendants. Upon an indictment or information against several defendants any one or more may be convicted or acquitted. [1891 c 28 § 37; Code 1881 § 1022; 1873 p 228 § 205; 1869 p 243 § 200; RRS § 2073. Formerly RCW 10.61.030, part.]

Rules of court: *This section superseded in part by CrR 6.16. See comment after CrR 6.16.*

Discharging defendant to give evidence: RCW 10.46.110.

10.61.060 Reconsideration of verdict. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal the court cannot require the jury to reconsider it. [1891 c 28 § 78; Code 1881 § 1100; 1873 p 239 § 261; 1854 p 121 § 125; RRS § 2170.]

Chapter 10.64 RCW JUDGMENTS AND SENTENCES

Sections

10.64.015	Judgment to include costs—Exception.
10.64.025	Detention of defendant.
10.64.027	Conditions of release.
10.64.060	Form of sentence to penitentiary.
10.64.070	Recognizance to maintain good behavior or keep the peace.
10.64.075	Breach of recognizance conditions.
10.64.080	Judgments a lien on realty.
10.64.100	Final record—What to contain.
10.64.110	Fingerprint of defendant in felony convictions.
10.64.120	Referral assessments—Probation department oversight committee.
10.64.140	Loss of voting rights—Acknowledgment.

Rules of court: *Judgments and sentencing—CrR 7.1 through 7.4.*

*Assessments required of other convicted persons
offender supervision: RCW 9.94A.780.
parolees: RCW 72.04A.120.*

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.64.015 Judgment to include costs—Exception. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise. [Code 1881 § 1104; 1873 p 241 § 272; 1854 p 121 § 129; RRS § 2187. Formerly RCW 10.64.010, part.]

Requiring defendant to pay costs—Procedure: RCW 10.01.160, 10.01.170, chapter 10.82 RCW.

10.64.025 Detention of defendant. (1) A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated.

(2) A defendant who has been found guilty of one of the following offenses shall be detained pending sentencing: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); pro-

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moting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses. [2011 c 111 § 4; 1996 c 275 § 10; 1989 c 276 § 2.]

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

10.64.027 Conditions of release. In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under RCW 10.64.025 regarding the whereabouts of the defendant, contact with the victim, or other conditions. [1989 c 276 § 5.]

Additional notes found at www.leg.wa.gov

10.64.060 Form of sentence to penitentiary. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he or she be punished by confinement at hard labor; and he or she may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order. [2010 c 8 § 1056; Code 1881 § 1127; 1873 p 243 § 285; 1854 p 124 § 149; RRS § 2208.]

Indeterminate sentences: Chapter 9.95 RCW.

Sentencing, 1981 act: Chapter 9.94A RCW.

10.64.070 Recognizance to maintain good behavior or keep the peace. Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he or she shall so recognize. [2010 c 8 § 1057; 1891 c 28 § 83; Code 1881 § 1121; 1873 p 242 § 279; 1854 p 123 § 143; RRS § 2202. FORMER PART OF SECTION: Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203, now codified as RCW 10.64.075.]

10.64.075 Breach of recognizance conditions. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace. [Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203. Formerly RCW 10.64.070, part.]

10.64.080 Judgments a lien on realty. Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner, and with like effect as judgments in civil actions. [Code 1881 § 1111; RRS § 2188.]

10.64.100 Final record—What to contain. The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes

of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. [1891 c 28 § 85; Code 1881 § 1134; 1873 p 245 § 292; 1854 p 125 § 156; RRS § 2224.]

10.64.110 Fingerprint of defendant in felony convictions. Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult, a fingerprint of the defendant or juvenile who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff.

The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, order of adjudication of delinquency, or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry. [1977 ex.s. c 259 § 1.]

10.64.120 Referral assessments—Probation department oversight committee. (1) Every judge of a court of limited jurisdiction shall have the authority to levy upon a person a monthly assessment not to exceed one hundred dollars for services provided whenever the person is referred by the court to the misdemeanor probation department for evaluation or supervision services. The assessment may also be made by a judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) For the purposes of this section the administrative office of the courts shall define a probation department and adopt rules for the qualifications of probation officers based on occupational and educational requirements developed by an oversight committee. This oversight committee shall include a representative from the district and municipal court judges' association, the misdemeanor corrections association, the administrative office of the courts, and associations of cities and counties. The oversight committee shall consider qualifications that provide the training and education necessary to (a) conduct presentencing and postsentencing background investigations, including sentencing recommendations to the court regarding jail terms, alternatives to incarceration, and conditions of release; and (b) provide ongoing supervision and assessment of offenders' needs and the risk they pose to the community.

(3) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(4) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050.

(5) Assessments and fees levied upon a probationer under this section must be suspended while the probationer is being supervised by another state under RCW 9.94A.745, the interstate compact for adult offender supervision. [2005 c 400 § 7; 2005 c 282 § 22; 1996 c 298 § 6; 1991 c 247 § 3; 1982 c 207 § 4.]

Reviser's note: This section was amended by 2005 c 282 § 22 and by 2005 c 400 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

10.64.140 Loss of voting rights—Acknowledgment.

(1) When a person is convicted of a felony, the court shall require the defendant to sign a statement acknowledging that:

(a) The defendant's right to vote has been lost due to the felony conviction;

(b) If the defendant is registered to vote, the voter registration will be canceled;

(c) The right to vote is provisionally restored as long as the defendant is not under the authority of the department of corrections;

(d) The defendant must reregister before voting;

(e) The provisional right to vote may be revoked if the defendant fails to comply with all the terms of his or her legal financial obligations or an agreement for the payment of legal financial obligations;

(f) The right to vote may be permanently restored by one of the following for each felony conviction:

(i) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;

(ii) A court order issued by the sentencing court restoring the right, as provided in RCW 9.92.066;

(iii) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or

(iv) A certificate of restoration issued by the governor, as provided in RCW 9.96.020; and

(g) Voting before the right is restored is a class C felony under RCW 29A.84.660.

(2) For the purposes of this section, a person is under the authority of the department of corrections if the person is:

(a) Serving a sentence of confinement in the custody of the department of corrections; or

(b) Subject to community custody as defined in RCW 9.94A.030. [2009 c 325 § 5; 2005 c 246 § 1.]

Effective date—2005 c 246: "This act takes effect January 1, 2006." [2005 c 246 § 26.]

Chapter 10.66 RCW

DRUG TRAFFICKERS—OFF-LIMITS ORDERS

Sections

10.66.005	Findings.
10.66.010	Definitions.
10.66.020	When order may be issued.
10.66.030	Hearing—Summons.
10.66.040	Ex parte temporary order—Hearing—Notice.
10.66.050	Additional relief—PADT area.
10.66.060	Bond or security.
10.66.070	Appearance of party.
10.66.080	Notice of order to law enforcement agency.
10.66.090	Penalties.
10.66.100	Additional penalties.
10.66.110	Jurisdiction.
10.66.120	Venue.
10.66.130	Modification of order—Notice to law enforcement agency.
10.66.900	Severability—1989 c 271.

10.66.005 Findings. The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threaten-

ing every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem. [1989 c 271 § 213.]

10.66.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by *RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with drug trafficking. The area may include the full width of streets, alleys and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries. [1989 c 271 § 214.]

*Reviser's note: RCW 10.99.020 was amended by 2004 c 18 § 2, changing subsection (1) to subsection (3).

10.66.020 When order may be issued. A court may enter an off-limits order enjoining a known drug trafficker who has been associated with drug trafficking in an area that the court finds to be a PADT area, from entering or remaining in a designated PADT area for up to one year. This relief may be ordered pursuant to applications for injunctive relief or as part of a criminal proceeding as follows:

(1) In a civil action, including an action brought under this chapter;

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(2) In a nuisance abatement action pursuant to chapter 7.43 RCW;

(3) In an eviction action to exclude known drug traffickers or tenants who were evicted for allowing drug trafficking to occur on the premises which were the subject of the eviction action;

(4) As a condition of pretrial release of a known drug trafficker awaiting trial on drug charges. The order shall be in effect until the time of sentencing or dismissal of the criminal charges; or

(5) As a condition of sentencing of any known drug trafficker convicted of a drug offense. The order may include all periods of community placement or community supervision. [1989 c 271 § 215.]

10.66.030 Hearing—Summons. Upon the filing of an application for an off-limits order under RCW 10.66.020 (1), (2), or (3), the court shall set a hearing fourteen days from the filing of the application, or as soon thereafter as the hearing can be scheduled. If the respondent has not already been served with a summons, the application shall be served on the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date. [1989 c 271 § 216.]

10.66.040 Ex parte temporary order—Hearing—Notice. Upon filing an application for an off-limits order under this chapter, an applicant may obtain an ex parte temporary off-limits order, with or without notice, only upon a showing that serious or irreparable harm will result to the applicant if the temporary off-limits order is not granted. An ex parte temporary off-limits order shall be effective for a fixed period not to exceed fourteen days, but the court may reissue the order upon a showing of good cause. A hearing on a one-year off-limits order, as provided in this chapter, shall be set for fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the temporary off-limits order along with a copy of the application and notice of the date set for the full hearing. At the hearing, if the court finds that respondent is a known drug trafficker who has engaged in drug trafficking in a particular area, and that the area is associated with a pattern of drug activities, the court shall issue a one-year off-limits order prohibiting the respondent from having any contact with the PADT area. At any time within three months before the expiration of the order, the applicant may apply for a renewal of the order by filing a new petition under this chapter. [1989 c 271 § 217.]

10.66.050 Additional relief—PADT area. In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under RCW 10.66.020 (1), (2), or (3). The court in its discretion may allow a respondent, who is the subject of any order issued under RCW 10.66.020 as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the

court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court. [1999 c 143 § 46; 1989 c 271 § 218.]

10.66.060 Bond or security. A temporary off-limits order or a one-year off-limits order may not issue under this chapter except upon the giving of a bond or security by the applicant. The court shall set the bond or security in the amount the court deems proper, but not less than one thousand dollars, for the payment of costs and damages that may be incurred by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington. [1989 c 271 § 219.]

10.66.070 Appearance of party. Nothing in this chapter shall preclude a party from appearing in person or by counsel. [1989 c 271 § 220.]

10.66.080 Notice of order to law enforcement agency. A copy of an off-limits order granted under this chapter shall be forwarded by the court to the local law enforcement agency with jurisdiction over the PADT area specified in the order on or before the next judicial day following issuance of the order. Upon receipt of the order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 221.]

10.66.090 Penalties. (1) A person who willfully disobeys an off-limits order issued under this chapter is guilty of a gross misdemeanor.

(2) A person is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person willfully disobeys an off-limits order in violation of the terms of the order and also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter. [2003 c 53 § 93; 1989 c 271 § 223.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

10.66.100 Additional penalties. Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under chapter 7.21 RCW. [1999 c 143 § 47; 1989 c 271 § 222.]

10.66.110 Jurisdiction. The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter. [1989 c 271 § 224.]

10.66.120 Venue. For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred. [1989 c 271 § 225.]

10.66.130 Modification of order—Notice to law enforcement agency. Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 226.]

10.66.900 Severability—1989 c 271. See note following RCW 9.94A.510.

Chapter 10.70 RCW

COMMITMENTS

(Formerly: Commitments and executions)

Sections

10.70.010	Commitment until fine and costs are paid.
10.70.020	Mittimus upon sentence to imprisonment.
10.70.140	Aliens committed—Notice to immigration authority.
10.70.150	Aliens committed—Copies of clerk's records.

Execution of death sentence: Chapter 10.95 RCW.

10.70.010 Commitment until fine and costs are paid.

When the defendant is adjudged to pay a fine and costs, the court shall order him or her to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law. [2010 c 8 § 1058; Code 1881 § 1119; 1873 p 242 § 277; 1854 p 123 § 141; RRS § 2200.]

Commitment for failure to pay fine and costs—Execution against defendant's property: RCW 10.82.030.

Stay of execution for sixty days on recognizance: RCW 10.82.020, 10.82.025.

10.70.020 Mittimus upon sentence to imprisonment.

When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his or her deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly. [2010 c 8 § 1059; Code 1881 § 1126; 1873 p 243 § 284; 1854 p 124 § 148; RRS § 2207.]

10.70.140 Aliens committed—Notice to immigration authority.

Whenever any person shall be committed to a state correctional facility, the county jail, or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such penitentiary, reformatory, jail or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which the person is a citizen, and the date on which and the port at which the person last

entered the United States. [1992 c 7 § 29; 1925 ex.s. c 169 § 1; RRS § 2206-1.]

10.70.150 Aliens committed—Copies of clerk’s records. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any alien to any state or county institution which is supported wholly or in part by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien. [1925 ex.s. c 169 § 2; RRS § 2206-2.]

Chapter 10.73 RCW CRIMINAL APPEALS

Sections

10.73.010	Appeal by defendant.
10.73.040	Bail pending appeal.
10.73.090	Collateral attack—One year time limit.
10.73.100	Collateral attack—When one year limit not applicable.
10.73.110	Collateral attack—One year time limit—Duty of court to advise defendant.
10.73.120	Collateral attack—One year time limit—Duty of department of corrections to advise.
10.73.130	Collateral attack—One year time limit—Applicability.
10.73.140	Collateral attack—Subsequent petitions.
10.73.150	Right to counsel.
10.73.160	Court fees and costs.
10.73.170	DNA testing requests.
10.73.900	Severability—1989 c 395.

Effect of appellate review by defendant: RCW 9.95.060, 9.95.062.

10.73.010 Appeal by defendant. Appeal by defendant, see Rules of Court.

10.73.040 Bail pending appeal. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his or her behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his or her sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with. [2010 c 8 § 1060; 1999 c 143 § 48; 1893 c 61 § 31; RRS § 1747.]

10.73.090 Collateral attack—One year time limit. (1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sen-

tence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

- The date it is filed with the clerk of the trial court;
- The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or
- The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final. [1989 c 395 § 1.]

10.73.100 Collateral attack—When one year limit not applicable. The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant’s conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court’s jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard. [1989 c 395 § 2.]

10.73.110 Collateral attack—One year time limit—Duty of court to advise defendant. At the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100. [1989 c 395 § 4.]

10.73.120 Collateral attack—One year time limit—Duty of department of corrections to advise. As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23, 1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony. [1989 c 395 § 5.]

10.73.130 Collateral attack—One year time limit—Applicability. RCW 10.73.090 and 10.73.100 apply only to petitions and motions filed more than one year after July 23, 1989. [1989 c 395 § 6.]

10.73.140 Collateral attack—Subsequent petitions. If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition. Upon receipt of a personal restraint petition, the court of appeals shall review the petition and determine whether the person has previously filed a petition or petitions and if so, compare them. If upon review, the court of appeals finds that the petitioner has previously raised the same grounds for review, or that the petitioner has failed to show good cause why the ground was not raised earlier, the court of appeals shall dismiss the petition on its own motion without requiring the state to respond to the petition. Upon receipt of a first or subsequent petition, the court of appeals shall, whenever possible, review the petition and determine if the petition is based on frivolous grounds. If frivolous, the court of appeals shall dismiss the petition on its own motion without first requiring the state to respond to the petition. [1989 c 395 § 9.]

10.73.150 Right to counsel. Counsel shall be provided at state expense to an adult offender convicted of a crime and to a juvenile offender convicted of an offense when the offender is indigent or indigent and able to contribute as those terms are defined in RCW 10.101.010 and the offender:

- (1) Files an appeal as a matter of right;
- (2) Responds to an appeal filed as a matter of right or responds to a motion for discretionary review or petition for review filed by the state;
- (3) Is under a sentence of death and requests counsel be appointed to file and prosecute a motion or petition for collateral attack as defined in RCW 10.73.090. Counsel may be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence, if the court determines that the collateral attack is not barred by RCW 10.73.090 or 10.73.140;
- (4) Is not under a sentence of death and requests counsel to prosecute a collateral attack after the chief judge has determined that the issues raised by the petition are not frivolous, in accordance with the procedure contained in rules of appellate procedure 16.11. Counsel shall not be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence;
- (5) Responds to a collateral attack filed by the state or responds to or prosecutes an appeal from a collateral attack that was filed by the state;
- (6) Prosecutes a motion or petition for review after the supreme court or court of appeals has accepted discretionary review of a decision of a court of limited jurisdiction; or
- (7) Prosecutes a motion or petition for review after the supreme court has accepted discretionary review of a court of appeals decision. [1995 c 275 § 2.]

Finding—1995 c 275: "The legislature is aware that the constitutional requirements of equal protection and due process require that counsel be pro-

vided for indigent persons and persons who are indigent and able to contribute for the first appeal as a matter of right from a judgment and sentence in a criminal case or a juvenile offender proceeding, and no further. There is no constitutional right to appointment of counsel at public expense to collaterally attack a judgment and sentence in a criminal case or juvenile offender proceeding or to seek discretionary review of a lower appellate court decision.

The legislature finds that it is appropriate to extend the right to counsel at state expense beyond constitutional requirements in certain limited circumstances to persons who are indigent and persons who are indigent and able to contribute as those terms are defined in RCW 10.101.010." [1995 c 275 § 1.]

Additional notes found at www.leg.wa.gov

10.73.160 Court fees and costs. (1) The court of appeals, supreme court, and superior courts may require an adult or a juvenile convicted of an offense or the parents or another person legally obligated to support a juvenile offender to pay appellate costs.

(2) Appellate costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or collateral attack from a criminal conviction or sentence or a juvenile offender conviction or disposition. Appellate costs shall not include expenditures to maintain and operate government agencies that must be made irrespective of specific violations of the law. Expenses incurred for producing a verbatim report of proceedings and clerk's papers may be included in costs the court may require a convicted defendant or juvenile offender to pay.

(3) Costs, including recoupment of fees for court-appointed counsel, shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure and in Title 9 of the rules for appeal of decisions of courts of limited jurisdiction. An award of costs shall become part of the trial court judgment and sentence. An award of costs in juvenile cases shall also become part of any order previously entered in the trial court pursuant to RCW 13.40.145.

(4) A defendant or juvenile offender who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant, the defendant's immediate family, or the juvenile offender, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) The parents or another person legally obligated to support a juvenile offender who has been ordered to pay appellate costs pursuant to RCW 13.40.145 and who is not in contumacious default in the payment may at any time petition the court that sentenced the juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the parents or another person legally obligated to support a juvenile offender or on their immediate families, the sentencing court may remit all or part of the amount due in costs, or may modify the method of payment. [1995 c 275 § 3.]

Finding—Severability—1995 c 275: See notes following RCW 10.73.150.

10.73.170 DNA testing requests. (1) A person convicted of a felony in a Washington state court who currently is serving a term of imprisonment may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing, with a copy of the motion provided to the state office of public defense.

(2) The motion shall:

(a) State that:

(i) The court ruled that DNA testing did not meet acceptable scientific standards; or

(ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or

(iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;

(b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and

(c) Comply with all other procedural requirements established by court rule.

(3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

(4) Upon written request to the court that entered a judgment of conviction, a convicted person who demonstrates that he or she is indigent under RCW 10.101.010 may request appointment of counsel solely to prepare and present a motion under this section, and the court, in its discretion, may grant the request. Such motion for appointment of counsel shall comply with all procedural requirements established by court rule.

(5) DNA testing ordered under this section shall be performed by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(6) Notwithstanding any other provision of law, upon motion of defense counsel or the court's own motion, a sentencing court in a felony case may order the preservation of any biological material that has been secured in connection with a criminal case, or evidence samples sufficient for testing, in accordance with any court rule adopted for the preservation of evidence. The court must specify the samples to be maintained and the length of time the samples must be preserved. [2005 c 5 § 1; 2003 c 100 § 1; 2001 c 301 § 1; 2000 c 92 § 1.]

Effective date—2005 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2005]." [2005 c 5 § 2.]

Intent—2000 c 92: "Nothing in chapter 92, Laws of 2000 is intended to create a legal right or cause of action. Nothing in chapter 92, Laws of 2000 is intended to deny or alter any existing legal right or cause of action. Nothing in chapter 92, Laws of 2000 should be interpreted to deny postconviction DNA testing requests under existing law by convicted and incarcerated persons who were sentenced to confinement for a term less than life or the death penalty." [2000 c 92 § 4.]

Additional notes found at www.leg.wa.gov

10.73.900 Severability—1989 c 395. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1989 c 395 § 7.]

Chapter 10.77 RCW

CRIMINALLY INSANE—PROCEDURES

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- 10.77.940 Equal application of 1989 c 420—Evaluation for developmental disability.
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Rules of court: Cf. CrR 4.2(c).

Individuals with mental illness, commitment: Chapter 71.05 RCW.

Protocols required: RCW 71.05.214.

10.77.010 Definitions. As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(5) "Department" means the state department of social and health services.

(6) "Designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in *RCW 71A.10.020(3).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and ther-

apy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(15) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(16) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(17) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(18) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(19) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(20) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(21) "Secretary" means the secretary of the department of social and health services or his or her designee.

(22) "Treatment" means any currently standardized medical or mental health procedure including medication.

(23) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(24) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110. [2011 c 89 § 4; 2010 c 262 § 2; 2005 c 504 § 106; 2004 c 157 § 2; 2000 c 94 § 12. Prior: 1999 c 143 § 49; 1999 c 13 § 2; 1998 c 297 § 29; 1993 c 31 § 4; 1989 c 420 § 3; 1983 c 122 § 1; 1974 ex.s. c 198 § 1; 1973 1st ex.s. c 117 § 1.]

*Reviser's note: RCW 71A.10.020 was amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4).

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Findings—Intent—2004 c 157: "The legislature finds that recent state and federal case law requires clarification of state statutes with regard to competency evaluations and involuntary medication ordered in the context of competency restoration.

The legislature finds that the court in *Born v. Thompson*, 117 Wn. App. 57 (2003) interpreted the term "nonfatal injuries" in a manner that conflicts with the stated intent of the legislature to: "(1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; ... and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system" as stated in section 1, chapter 297, Laws of 1998. Consequently, the legislature intends to clarify that it intended "nonfatal injuries" to be interpreted in a manner consistent with the purposes of the competency restoration statutes.

The legislature also finds that the decision in *Sell v. United States*, ___ U.S. ___ (2003), requires a determination whether a particular criminal offense is "serious" in the context of competency restoration and the state's duty to protect the public. The legislature further finds that, in order to adequately protect the public and in order to provide additional opportunities for mental health treatment for persons whose conduct threatens themselves or threatens public safety and has led to contact with the criminal justice system in the state, the determination of those criminal offenses that are "serious" offenses must be made consistently throughout the state. In order to facilitate this consistency, the legislature intends to determine those offenses that

are serious in every case as well as the standards by which other offenses may be determined to be serious. The legislature also intends to clarify that a court may, to the extent permitted by federal law and required by the *Sell* decision, inquire into the civil commitment status of a defendant and may be told, if known." [2004 c 157 § 1.]

Severability—2004 c 157: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 157 § 7.]

Effective date—2004 c 157: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 157 § 8.]

Purpose—Construction—1999 c 13: "The purpose of this act is to make technical nonsubstantive changes to chapters 10.77 and 71.05 RCW. No provision of this act shall be construed as a substantive change in the provisions dealing with persons charged with crimes who are subject to evaluation under chapter 10.77 or 71.05 RCW." [1999 c 13 § 1.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.77.020 Rights of person under this chapter. (1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

- (a) The nature of the charges;
- (b) The statutory offense included within them;
- (c) The range of allowable punishments thereunder;
- (d) Possible defenses to the charges and circumstances in mitigation thereof; and
- (e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by the secretary to be fair and reasonable.

(3) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present.

(4) In a competency evaluation conducted under this chapter, the defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

(5) In a sanity evaluation conducted under this chapter, if a defendant refuses to answer questions or to participate in an examination conducted in response to the defendant's asser-

tion of an insanity defense, the court shall exclude from evidence at trial any testimony or evidence from any expert or professional person obtained or retained by the defendant. [2006 c 109 § 1; 1998 c 297 § 30; 1993 c 31 § 5; 1974 ex.s. c 198 § 2; 1973 1st ex.s. c 117 § 2.]

Application—2006 c 109: "This act applies to all examinations performed on or after June 7, 2006." [2006 c 109 § 2.]

Severability—2006 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 109 § 3.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.025 Maximum term of commitment or treatment. (1) Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.

(2) Whenever any person committed under any provision of this chapter has not been released within seven days of the maximum possible penal sentence under subsection (1) of this section, and the professional person in charge of the facility believes that the person presents a likelihood of serious harm or is gravely disabled due to a mental disorder, the professional person shall, prior to the expiration of the maximum penal sentence, notify the appropriate *county designated mental health professional of the impending expiration and provide a copy of all relevant information regarding the person, including the likely release date and shall indicate why the person should not be released.

(3) A *county designated mental health professional who receives notice and records under subsection (2) of this section shall, prior to the date of the expiration of the maximum sentence, determine whether to initiate proceedings under chapter 71.05 RCW. [2000 c 94 § 13; 1998 c 297 § 31.]

***Reviser's note:** The term "county designated mental health professional" as defined in RCW 10.77.010 was changed to "designated mental health professional" by 2005 c 504 § 106.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.027 Eligible for commitment regardless of cause. When a *county designated mental health professional or a professional person has determined that a person has a mental disorder, and is otherwise committable, the cause of the person's mental disorder shall not make the person ineligible for commitment under chapter 71.05 RCW. [2004 c 166 § 3.]

***Reviser's note:** The term "county designated mental health professional" as defined in RCW 10.77.010 was changed to "designated mental health professional" by 2005 c 504 § 106.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

10.77.030 Establishing insanity as a defense. (1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at

such later time as the court may for good cause permit, files a written notice of his or her intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence.

(3) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute insanity. [1998 c 297 § 32; 1974 ex.s. c 198 § 3; 1973 1st ex.s. c 117 § 3.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.040 Instructions to jury on special verdict. Whenever the issue of insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | answer
yes or no |
|---|---------------------|
| 1. Did the defendant commit the act charged? | |
| 2. If your answer to number 1 is yes, do you acquit him or her because of insanity existing at the time of the act charged? | |
| 3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions? | |
| 4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions? | |
| 5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital? | |

[1998 c 297 § 33; 1974 ex.s. c 198 § 4; 1973 1st ex.s. c 117 § 4.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.050 Mental incapacity as bar to proceedings. No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues. [1974 ex.s. c 198 § 5; 1973 1st ex.s. c 117 § 5.]

10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Evaluation—Bail—Report. (1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. If the court is advised by any party that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.

(c) The evaluator shall assess the defendant in a jail, detention facility, in the community, or in court to determine whether a period of inpatient commitment will be necessary to complete an accurate evaluation. If inpatient commitment is needed, the signed order of the court shall serve as authority for the evaluator to request the jail or detention facility to transport the defendant to a hospital or secure mental health facility for a period of commitment not to exceed fifteen days from the time of admission to the facility. Otherwise, the evaluator shall complete the evaluation.

(d) The court may commit the defendant for evaluation to a hospital or secure mental health facility without an assessment if: (i) The defendant is charged with murder in the first or second degree; (ii) the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or (iii) the court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant. The court shall not order an initial inpatient evaluation for any purpose other than a competency evaluation.

(e) The order shall indicate whether, in the event the defendant is committed to a hospital or secure mental health facility for evaluation, all parties agree to waive the presence of the defendant or to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

(f) When a defendant is ordered to be committed for inpatient evaluation under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the evaluator regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the evaluation authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the

defendant assist him or her in obtaining an expert or professional person.

(3) The report of the evaluation shall include the following:

(a) A description of the nature of the evaluation;

(b) A diagnosis or description of the current mental status of the defendant;

(c) If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, and an evaluation and report by an expert or professional person has been provided concluding that the defendant was criminally insane at the time of the alleged offense, an opinion as to the defendant's sanity at the time of the act, and an opinion as to whether the defendant presents a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, provided that no opinion shall be rendered under this subsection (3)(d) unless the evaluator or court determines that the defendant is competent to stand trial;

(e) When directed by the court, if an evaluation and report by an expert or professional person has been provided concluding that the defendant lacked the capacity at the time of the offense to form the mental state necessary to commit the charged offense, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a designated mental health professional under chapter 71.05 RCW.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section and may choose to designate more than one evaluator. [2012 c 256 § 3; 2004 c 9 § 1; 2000 c 74 § 1; 1998 c 297 § 34; 1989 c 420 § 4; 1974 ex.s. c 198 § 6; 1973 1st ex.s. c 117 § 6.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.77.065 Mental condition evaluations—Reports and recommendations required—Discharge of defendant when determined competent to stand trial.

(1)(a)(i) The expert conducting the evaluation shall provide his or her report and recommendation to the court in which the criminal proceeding is pending. For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the court that he or she is unable to complete the evaluation because of such lack of cooperation.

(ii) A copy of the report and recommendation shall be provided to the designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person,

to the person designated under (a)(iv) of this subsection. Upon request, the evaluator shall also provide copies of any source documents relevant to the evaluation to the designated mental health professional.

(iii) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. If the defendant is discharged to the custody of a local correctional facility, the local correctional facility must continue the medication regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication.

(iv) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in RCW 71.05.020 or, in cooperation with the regional support network, a professional person at the regional support network to receive the report and recommendation.

(v) Upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator of the name of the professional person, or person designated under (a)(iv) of this subsection, to receive the report and recommendation.

(b) If the evaluator concludes, under RCW 10.77.060(3)(f), the person should be evaluated by a designated mental health professional under chapter 71.05 RCW, the court shall order such evaluation be conducted prior to release from confinement when the person is acquitted or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(2) The designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (1)(a) of this section.

(3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the designated mental health professional under subsection (2) of this section to the secretary.

(4) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW. [2012 c 256 § 4; 2008 c 213 § 1; 2000 c 74 § 2; 1998 c 297 § 35.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.77.068 Competency to stand trial, admissions for inpatient services—Performance targets—Duties of the

department—Report—New entitlement or cause of action not created—No basis for contempt or motion to dismiss. (1)(a) The legislature establishes the following performance targets for the timeliness of the completion of accurate and reliable evaluations of competency to stand trial and admissions for inpatient services related to competency to proceed or stand trial for adult criminal defendants. The legislature recognizes that these targets may not be achievable in all cases without compromise to quality of evaluation services, but intends for the department to manage, allocate, and request appropriations for resources in order to meet these targets whenever possible without sacrificing the accuracy of competency evaluations, and to otherwise make sustainable improvements and track performance related to the timeliness of competency services:

(i) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized treatment or evaluation services related to competency, or to extend an offer of admission for legally authorized services following dismissal of charges based on incompetent to proceed or stand trial, seven days or less;

(ii) For completion of a competency evaluation in jail and distribution of the evaluation report for a defendant in pretrial custody, seven days or less;

(iii) For completion of a competency evaluation in the community and distribution of the evaluation report for a defendant who is released from custody and makes a reasonable effort to cooperate with the evaluation, twenty-one days or less.

(b) The time periods measured in these performance targets shall run from the date on which the state hospital receives the court referral and charging documents, discovery, and criminal history information related to the defendant. The targets in (a)(i) and (ii) of this subsection shall be phased in over a six-month period from May 1, 2012. The target in (a)(iii) of this subsection shall be phased in over a twelve-month period from May 1, 2012.

(c) The legislature recognizes the following nonexclusive list of circumstances that may place achievement of targets for completion of competency services described in (a) of this subsection out of the department's reach in an individual case without aspersion to the efforts of the department:

(i) Despite a timely request, the department has not received necessary medical clearance information regarding the current medical status of a defendant in pretrial custody for the purposes of admission to a state hospital;

(ii) The individual circumstances of the defendant make accurate completion of an evaluation of competency to proceed or stand trial dependent upon review of medical history information which is in the custody of a third party and cannot be immediately obtained by the department. Completion of a competency evaluation shall not be postponed for procurement of medical history information which is merely supplementary to the competency determination;

(iii) Completion of the referral is frustrated by lack of availability or participation by counsel, jail or court personnel, interpreters, or the defendant; or

(iv) An unusual spike in the receipt of evaluation referrals or in the number of defendants requiring restoration services has occurred, causing temporary delays until the unex-

pected excess demand for competency services can be resolved.

(2) The department shall:

(a) Develop, document, and implement procedures to monitor the clinical status of defendants admitted to a state hospital for competency services that allow the state hospital to accomplish early discharge for defendants for whom clinical objectives have been achieved or may be achieved before expiration of the commitment period;

(b) Investigate the extent to which patients admitted to a state hospital under this chapter overstay time periods authorized by law and take reasonable steps to limit the time of commitment to authorized periods; and

(c) Establish written standards for the productivity of forensic evaluators and utilize these standards to internally review the performance of forensic evaluators.

(3) Following any quarter in which a state hospital has failed to meet one or more of the performance targets in subsection (1) of this section after full implementation of the performance target, the department shall report to the executive and the legislature the extent of this deviation and describe any corrective action being taken to improve performance. This report must be made publicly available. An average may be used to determine timeliness under this subsection.

(4) Beginning December 1, 2013, the department shall report annually to the legislature and the executive on the timeliness of services related to competency to proceed or stand trial and the timeliness with which court referrals accompanied by charging documents, discovery, and criminal history information are provided to the department relative to the signature date of the court order. The report must be in a form that is accessible to the public and that breaks down performance by county.

(5) This section does not create any new entitlement or cause of action related to the timeliness of competency evaluations or admission for inpatient services related to competency to proceed or stand trial, nor can it form the basis for contempt sanctions under chapter 7.21 RCW or a motion to dismiss criminal charges. [2012 c 256 § 2.]

Purpose—2012 c 256: "The purpose of this act is to sustainably improve the timeliness of services related to competency to stand trial by setting performance expectations, establishing new mechanisms for accountability, and enacting reforms to ensure that forensic resources are expended in an efficient and clinically appropriate manner without diminishing the quality of competency services, and to reduce the time defendants with mental illness spend in jail awaiting evaluation and restoration of competency." [2012 c 256 § 1.]

Effective date—2012 c 256: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 1, 2012." [2012 c 256 § 14.]

10.77.070 Examination rights of defendant's expert or professional person. When the defendant wishes to be examined by a qualified expert or professional person of his or her own choice such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination, as well as to all relevant medical and psychological records and reports. [1998 c 297 § 36; 1973 1st ex.s. c 117 § 7.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

(2012 Ed.)

10.77.080 Motion for acquittal on grounds of insanity—Hearing—Findings. The defendant may move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, That a defendant so acquitted may not later contest the validity of his or her detention on the grounds that he or she did not commit the acts charged. At the hearing upon the motion the defendant shall have the burden of proving by a preponderance of the evidence that he or she was insane at the time of the offense or offenses with which he or she is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact. [1998 c 297 § 37; 1974 ex.s. c 198 § 7; 1973 1st ex.s. c 117 § 8.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.084 Stay of proceedings—Treatment—Restoration of competency—Commitment—Other procedures.

(1)(a) If at any time during the pendency of an action and prior to judgment the court finds, following a report as provided in RCW 10.77.060, a defendant is incompetent, the court shall order the proceedings against the defendant be stayed except as provided in subsection (4) of this section.

(b) At the end of the mental health treatment and restoration period, if any, or at any time a professional person determines competency has been, or is unlikely to be, restored, the defendant shall be returned to court for a hearing. The parties may agree to waive the defendant's presence or to remote participation by the defendant at a hearing or presentation of an agreed order if the recommendation of the evaluator is for the continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to expiration of the defendant's authorized period of commitment, in which case the department shall promptly notify the court and parties of the date of the defendant's admission and expiration of commitment so that a timely hearing date may be scheduled. If, after notice and hearing, competency has been restored, the stay entered under (a) of this subsection shall be lifted. If competency has not been restored, the proceedings shall be dismissed without prejudice. If the court concludes that competency has not been restored, but that further treatment within the time limits established by RCW 10.77.086 or 10.77.088 is likely to restore competency, the court may order that treatment for purposes of competency restoration be continued. Such treatment may not extend beyond the combination of time provided for in RCW 10.77.086 or 10.77.088.

(c) If at any time during the proceeding the court finds, following notice and hearing, a defendant is not likely to regain competency, the proceedings shall be dismissed without prejudice and the defendant shall be evaluated for civil commitment proceedings.

(2) If the defendant is referred for evaluation by a designated mental health professional under this chapter, the designated mental health professional shall provide prompt written notification of the results of the evaluation and whether the person was detained. The notification shall be provided to the court in which the criminal action was pending, the

prosecutor, the defense attorney in the criminal action, and the facility that evaluated the defendant for competency.

(3) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(4) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to assist in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

(5) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of evaluation which meets the requirements of RCW 10.77.060(3). For defendants charged with a felony, the report following the second competency restoration period or first competency restoration period if the defendant's incompetence is determined to be solely due to a developmental disability or the evaluator concludes that the defendant is not likely to regain competency must include an assessment of the defendant's future dangerousness which is evidence-based regarding predictive validity. [2012 c 256 § 5; 2007 c 375 § 3.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: "Captions used in this act are not any part of the law." [2007 c 375 § 19.]

10.77.0845 Evaluation and determination of individual with developmental disability—Program placement—Admissions, limitation. (1) A defendant found incompetent by the court under RCW 10.77.084 must be evaluated at the direction of the secretary and a determination made whether the defendant is an individual with a developmental disability. Such evaluation and determination must be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary.

(2) When appropriate, and subject to available funds, if the defendant is determined to be an individual with a developmental disability, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant has the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. A copy of the evaluation must be sent to the program.

(a) The program must be separate from programs serving persons involved in any other treatment or habilitation program.

(b) The program must be appropriately secure under the circumstances and must be administered by developmental disabilities professionals who shall direct the habilitation efforts.

(c) The program must provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety.

(3) The department may limit admissions of such persons to this specialized program in order to ensure that expen-

ditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services.

(4) The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. [2012 c 256 § 7.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

10.77.086 Commitment—Procedure in felony charge. (1)(a) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(b), but in any event for a period of no longer than ninety days, the court:

(i) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

(ii) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person.

(b) For a defendant whose highest charge is a class C felony, or a class B felony that is not classified as violent under RCW 9.94A.030, the maximum time allowed for the initial period of commitment for competency restoration is forty-five days.

(2) On or before expiration of the initial period of commitment under subsection (1) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional period of ninety days, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second restoration period. The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury. No extension shall be ordered for a second or third restoration period as provided in subsection (4) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second restoration period or at the end of the first restoration period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and the court shall either order the release of the defendant or order the defendant be committed to a hospital or secure mental health facility for up to seventy-two hours starting from admission to the facility, excluding Saturdays, Sundays, and holidays, for evaluation for the purpose of filing a civil commitment petition. The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii)

presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months. [2012 c 256 § 6; 2007 c 375 § 4.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

10.77.088 Placement—Procedure in nonfelony charge. (1)(a) If the defendant is charged with a nonfelony crime which is a serious offense as identified in RCW 10.77.092 and found by the court to be not competent, then the court shall order the secretary to place the defendant:

(i) At a secure mental health facility in the custody of the department or an agency designated by the department for mental health treatment and restoration of competency. The placement shall not exceed fourteen days in addition to any unused time of the evaluation under RCW 10.77.060. The court shall compute this total period and include its computation in the order. The fourteen-day period plus any unused time of the evaluation under RCW 10.77.060 shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility;

(ii) On conditional release for up to ninety days for mental health treatment and restoration of competency; or

(iii) Any combination of this subsection.

(b)(i) If the proceedings are dismissed under RCW 10.77.084 and the defendant was on conditional release at the time of dismissal, the court shall order the designated mental health professional within that county to evaluate the defendant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

(ii) If the defendant was in custody and not on conditional release at the time of dismissal, the defendant shall be detained and sent to an evaluation and treatment facility for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, for evaluation for purposes of filing a petition under chapter 71.05 RCW. The seventy-two-hour period shall commence upon the next nonholiday weekday following the court order and shall run to the end of the last nonholiday weekday within the seventy-two-hour period.

(2) If the defendant is charged with a nonfelony crime that is not a serious offense as defined in RCW 10.77.092:

The court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the designated mental health professional to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection, and provide an opportunity for a hearing on whether to dismiss the proceedings. [2007 c 375 § 5.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

(2012 Ed.)

10.77.091 Placement—Secure facility—Treatment and rights—Custody—Reports. (Expires June 30, 2015.)

(1) If the secretary determines in writing that a person committed to the custody of the secretary for treatment as criminally insane presents an unreasonable safety risk which, based on behavior, clinical history, and facility security is not manageable in a state hospital setting, the secretary may place the person in any secure facility operated by the secretary or the secretary of the department of corrections. Any person affected by this provision shall receive appropriate mental health treatment governed by a formalized treatment plan targeted at mental health rehabilitation needs and shall be afforded his or her rights under RCW 10.77.140, 10.77.150, and 10.77.200. The secretary of the department of social and health services shall retain legal custody of any person placed under this section and review any placement outside of a department mental health hospital every three months, or sooner if warranted by the person's mental health status, to determine if the placement remains appropriate.

(2) Beginning December 1, 2010, and every six months thereafter, the secretary shall report to the governor and the appropriate committees of the legislature regarding the use of the authority under this section to transfer persons to a secure facility. The report shall include information related to the number of persons who have been placed in a secure facility operated by the secretary or the secretary of the department of corrections, and the length of time that each such person has been in the secure facility.

(3) This section expires June 30, 2015. [2010 c 263 § 2.]

10.77.092 Involuntary medication—Serious offenses.

(1) For purposes of determining whether a court may authorize involuntary medication for the purpose of competency restoration pursuant to RCW 10.77.084, a pending charge involving any one or more of the following crimes is a serious offense per se in the context of competency restoration:

(a) Any violent offense, sex offense, serious traffic offense, and most serious offense, as those terms are defined in RCW 9.94A.030;

(b) Any offense, except nonfelony counterfeiting offenses, included in crimes against persons in RCW 9.94A.411;

(c) Any offense contained in chapter 9.41 RCW (firearms and dangerous weapons);

(d) Any offense listed as domestic violence in RCW 10.99.020;

(e) Any offense listed as a harassment offense in chapter 9A.46 RCW;

(f) Any violation of chapter 69.50 RCW that is a class B felony; or

(g) Any city or county ordinance or statute that is equivalent to an offense referenced in this subsection.

(2)(a) In a particular case, a court may determine that a pending charge not otherwise defined as serious by state or federal law or by a city or county ordinance is, nevertheless, a serious offense within the context of competency restoration treatment when the conduct in the charged offense falls within the standards established in (b) of this subsection.

(b) To determine that the particular case is a serious offense within the context of competency restoration, the court must consider the following factors and determine that

one or more of the following factors creates a situation in which the offense is serious:

(i) The charge includes an allegation that the defendant actually inflicted bodily or emotional harm on another person or that the defendant created a reasonable apprehension of bodily or emotional harm to another;

(ii) The extent of the impact of the alleged offense on the basic human need for security of the citizens within the jurisdiction;

(iii) The number and nature of related charges pending against the defendant;

(iv) The length of potential confinement if the defendant is convicted; and

(v) The number of potential and actual victims or persons impacted by the defendant's alleged acts. [2008 c 213 § 2; 2004 c 157 § 3.]

Findings—Intent—Severability—Effective date—2004 c 157: See notes following RCW 10.77.010.

10.77.093 Involuntary medication—Civil commitment. When the court must make a determination whether to order involuntary medications for the purpose of competency restoration or for maintenance of competency, the court shall inquire, and shall be told, and to the extent that the prosecutor or defense attorney is aware, whether the defendant is the subject of a pending civil commitment proceeding or has been ordered into involuntary treatment pursuant to a civil commitment proceeding. [2004 c 157 § 4.]

Findings—Intent—Severability—Effective date—2004 c 157: See notes following RCW 10.77.010.

10.77.094 Antipsychotic medication, administration.

(1) A state hospital may administer antipsychotic medication without consent to an individual who is committed under this chapter as criminally insane by following the same procedures applicable to the administration of antipsychotic medication without consent to a civilly committed patient under RCW 71.05.217, except for the following:

(a) The maximum period during which the court may authorize the administration of medication without consent under a single involuntary medication petition shall be the time remaining on the individual's current order of commitment or one hundred eighty days, whichever is shorter; and

(b) A petition for involuntary medication may be filed in either the superior court of the county that ordered the commitment or the superior court of the county in which the individual is receiving treatment, provided that a copy of any order that is entered must be provided to the superior court of the county that ordered the commitment following the hearing. The superior court of the county of commitment shall retain exclusive jurisdiction over all hearings concerning the release of the patient.

(2) The state has a compelling interest in providing antipsychotic medication to a patient who has been committed as criminally insane when refusal of antipsychotic medication would result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication that is in the best interest of the patient. [2012 c 256 § 12.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

10.77.095 Findings—Developmental disabilities. The legislature finds that among those persons who endanger the safety of others by committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity. The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities. Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 28; 1989 c 420 § 1. Formerly RCW 10.77.005.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.097 Records and reports accompany defendant upon transfer. A copy of relevant records and reports as defined by the department, in consultation with the department of corrections, made pursuant to this chapter, and including relevant information necessary to meet the requirements of RCW 10.77.065(1) and 10.77.084, shall accompany the defendant upon transfer to a mental health facility or a correctional institution or facility. [2008 c 213 § 3; 2000 c 74 § 4; 1998 c 297 § 47.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.77.100 Experts or professional persons as witnesses. Subject to the rules of evidence, experts or professional persons who have reported pursuant to this chapter may be called as witnesses at any proceeding held pursuant to this chapter. Both the prosecution and the defendant may summon any other qualified expert or professional persons to testify. [1974 ex.s. c 198 § 9; 1973 1st ex.s. c 117 § 10.]

10.77.110 Acquittal of crime. (1) If a defendant is acquitted of a crime by reason of insanity, and it is found that

he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's release. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is developmentally disabled. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release. [2000 c 94 § 14; 1998 c 297 § 39; 1989 c 420 § 6; 1983 c 25 § 1; 1979 ex.s. c 215 § 4; 1974 ex.s. c 198 § 10; 1973 1st ex.s. c 117 § 11.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.120 Care and treatment of committed person—Hearings—Release. (1) The secretary shall provide adequate care and individualized treatment to persons found criminally insane at one or several of the state institutions or facilities under the direction and control of the secretary. In order that the secretary may adequately determine the nature of the mental illness or developmental disability of the person committed as criminally insane, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in order to provide a proper evaluation and diagnosis of such individual. The examinations of all persons with developmental disabilities commit-

ted under this chapter shall be performed by developmental disabilities professionals. Any person so committed shall not be released from the control of the secretary except by order of a court of competent jurisdiction made after a hearing and judgment of release.

(2) Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send the person in the custody of one or more department employees to the county in which the hearing is to be held at the time the case is called for trial. During the time the person is absent from the facility, the person may be confined in a facility designated by and arranged for by the department, but shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall return the person to such institution or facility designated by the secretary. If the state appeals an order of release, such appeal shall operate as a stay, and the person shall remain in custody and be returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause. [2010 c 263 § 4; 2000 c 94 § 15; 1989 c 420 § 7; 1974 ex.s. c 198 § 11; 1973 1st ex.s. c 117 § 12.]

10.77.140 Periodic examinations—Developmentally disabled—Reports—Notice to court. Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. In the case of a committed or conditionally released person who is developmentally disabled, the expert shall be a developmental disabilities professional. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section. [1998 c 297 § 40; 1989 c 420 § 8; 1974 ex.s. c 198 § 12; 1973 1st ex.s. c 117 § 14.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.145 Authorization to leave facility where person is confined prohibited—Exceptions—Approval by secretary—Notification to county or city law enforcement agency. (1) No person committed to the custody of the department for the determination of competency to stand trial under RCW 10.77.060, the restoration of competency for trial under RCW 10.77.084, 10.77.086, or 10.77.088, or following an acquittal by reason of insanity shall be authorized to leave the facility where the person is confined, except in the following circumstances:

(a) In accordance with conditional release or furlough authorized by a court;

(b) For necessary medical or legal proceedings not available in the facility where the person is confined;

(c) For visits to the bedside of a member of the person's immediate family who is seriously ill; or

(d) For attendance at the funeral of a member of the person's immediate family.

(2) Unless ordered otherwise by a court, no leave under subsection (1) of this section shall be authorized unless the person who is the subject of the authorization is escorted by a person approved by the secretary. During the authorized leave, the person approved by the secretary must be in visual or auditory contact at all times with the person on authorized leave.

(3) Prior to the authorization of any leave under subsection (1) of this section, the secretary must give notification to any county or city law enforcement agency having jurisdiction in the location of the leave destination. [2010 c 262 § 1.]

10.77.150 Conditional release—Application—Secretary's recommendation—Order—Procedure. (1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) In instances in which persons examined pursuant to RCW 10.77.140 have not made application to the secretary for conditional release, but the secretary, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, reasonably believes the person may be conditionally released, the secretary may submit a recommendation for release to the court of the county that ordered the person's commitment. The secretary's recommendation must include any proposed terms and conditions upon which the secretary reasonably believes the person may be conditionally released. Conditional release may also include partial release for work, training, or educational purposes. Notice of the secretary's recommendation under this subsection must be provided to the person for whom the secretary has made the recommendation for release and to his or her attorney.

(3)(a) The court of the county which ordered the person's commitment, upon receipt of an application or recommendation for conditional release with the secretary's recommendation for conditional release terms and conditions, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary.

(b) The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine the person on his or her behalf.

(c) The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial

likelihood of committing criminal acts jeopardizing public safety or security.

(d) The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer prior to making any change in the offender's address or employment. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the community corrections officer shall notify the secretary or the secretary's designee, if the person is not in compliance with the court-ordered conditions of release.

(4) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other medical or mental health practitioner shall immediately upon the released person's failure to appear for the medication or treatment or upon a change in mental health condition that renders the patient a potential risk to the public report to the court, to the prosecuting attorney of the county in which the released person was committed, to the secretary, and to the supervising community corrections officer.

(5) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial. [2010 c 263 § 5; 1998 c 297 § 41; 1993 c 31 § 6; 1982 c 112 § 1; 1974 ex.s. c 198 § 13; 1973 1st ex.s. c 117 § 15.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.152 Conditional release—Application—County of origin. (1) In determining whether to support an application for conditional release on behalf of a person committed as criminally insane which would permit the person to reside outside of a state hospital, the secretary may not support a conditional release application to a location outside the person's county of origin unless it is determined by the secretary that the person's return to his or her county of origin would be inappropriate considering any court-issued protection orders, victim safety concerns, the availability of appropriate treatment, negative influences on the person, or the location of family or other persons or organizations offering

support to the person. When the department assists in developing a placement under this section which is outside of the county of origin, and there are two or more options for placement, it shall endeavor to develop the placement in a manner that does not have a disproportionate effect on a single county.

(2) If the committed person is not conditionally released to his or her county of origin, the department shall provide the law and justice council of the county in which the person is conditionally released with a written explanation.

(3) For purposes of this section, the offender's county of origin means the county of the court which ordered the person's commitment. [2011 c 94 § 1.]

10.77.155 Conditional release, furlough—Secretary's recommendation. No court may, without a hearing, enter an order conditionally releasing or authorizing the furlough of a person committed under this chapter, unless the secretary has recommended the release or furlough. If the secretary has not recommended the release or furlough, a hearing shall be held under RCW 10.77.150. [1994 c 150 § 1.]

10.77.160 Conditional release—Reports. When a conditionally released person is required by the terms of his or her conditional release to report to a physician, department of corrections community corrections officer, or medical or mental health practitioner on a regular or periodic basis, the physician, department of corrections community corrections officer, medical or mental health practitioner, or other such person shall monthly, for the first six months after release and semiannually thereafter, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county in which the person was committed, a report stating whether the person is adhering to the terms and conditions of his or her conditional release, and detailing any arrests or criminal charges filed and any significant change in the person's mental health condition or other circumstances. [2010 c 263 § 6; 1993 c 31 § 7; 1973 1st ex.s. c 117 § 16.]

10.77.163 Furlough—Notice—Temporary restraining order. (1) Before a person committed under this chapter is permitted temporarily to leave a treatment facility for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least forty-five days before the anticipated release and shall describe the conditions under which the release is to occur.

(2) In addition to the notice required by subsection (1) of this section, the superintendent of each state institution designated for the custody, care, and treatment of persons committed under this chapter shall notify appropriate law enforcement agencies through the state patrol communications network of the furloughs of persons committed under RCW 10.77.086 or 10.77.110. Notification shall be made at least

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thirty days before the furlough, and shall include the name of the person, the place to which the person has permission to go, and the dates and times during which the person will be on furlough.

(3) Upon receiving notice that a person committed under this chapter is being temporarily released under subsection (1) of this section, the prosecuting attorney may seek a temporary restraining order to prevent the release of the person on the grounds that the person is dangerous to self or others.

(4) The notice requirements contained in this section shall not apply to emergency medical furloughs.

(5) The existence of the notice requirements contained in this section shall not require any extension of the release date in the event the release plan changes after notification.

(6) The notice provisions of this section are in addition to those provided in RCW 10.77.205. [2008 c 213 § 4; 1994 c 129 § 4; 1990 c 3 § 106; 1989 c 420 § 9; 1983 c 122 § 2.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

10.77.165 Escape or disappearance—Notification requirements. (1) In the event of an escape by a person committed under this chapter from a state facility or the disappearance of such a person on conditional release or other authorized absence, the superintendent shall provide notification of the person's escape or disappearance for the public's safety or to assist in the apprehension of the person.

(a) The superintendent shall notify:

(i) State and local law enforcement officers located in the city and county where the person escaped and in the city and county which had jurisdiction of the person on the date of the applicable offense;

(ii) Other appropriate governmental agencies; and

(iii) The person's relatives.

(b) The superintendent shall provide the same notification as required by (a) of this subsection to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was convicted or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings if the person was charged with a violent offense; and

(iii) Any other appropriate persons.

(2) Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(3) The notice provisions of this section are in addition to those provided in RCW 10.77.205. [2011 c 305 § 6; 2010 c 28 § 1; 1993 c 31 § 8; 1990 c 3 § 107; 1989 c 420 § 10; 1983 c 122 § 3.]

Findings—2011 c 305: See note following RCW 74.09.295.

Additional notes found at www.leg.wa.gov

10.77.170 Payments to conditionally released persons. As funds are available, the secretary may provide payment to a person conditionally released pursuant to RCW 10.77.150, consistent with the provisions of RCW 72.02.100

and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 117 § 17.]

10.77.180 Conditional release—Periodic review of case. Each person conditionally released pursuant to RCW 10.77.150 shall have his or her case reviewed by the court which conditionally released him or her no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary of social and health services, the secretary of corrections, medical or mental health practitioner, or the prosecuting attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140 and 10.77.160, and the opinions of the secretary and other experts or professional persons. [1998 c 297 § 42; 1993 c 31 § 9; 1974 ex.s. c 198 § 14; 1973 1st ex.s. c 117 § 18.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.190 Conditional release—Revocation or modification of terms—Procedure. (1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his or her conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his or her conditional release the court or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody. The court shall be notified of the apprehension before the close of the next judicial day. The court shall schedule a hearing within thirty days to determine whether or not the person's conditional release should be modified or revoked. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court or secretary of social and health services or the secretary of corrections or their designees shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) If the hospital or facility designated to provide outpatient care determines that a conditionally released person presents a threat to public safety, the hospital or facility shall immediately notify the secretary of social and health services or the secretary of corrections or their designees. The secretary shall order that the conditionally released person be apprehended and taken into custody.

(4) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his or her conditional release shall be revoked and he or she shall be committed subject to release only in accordance with provisions of this chapter. [2010 c 263 § 7; 1998 c 297 § 43; 1993 c 31 § 10; 1982 c 112 § 2; 1974 ex.s. c 198 § 15; 1973 1st ex.s. c 117 § 19.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.195 Conditional release—Court approval—Compliance—Secretary to coordinate with designated treatment providers, department of corrections staff, and local law enforcement—Rules. For persons who have received court approval for conditional release, the secretary or the secretary's designee shall supervise the person's compliance with the court-ordered conditions of release. The level of supervision provided by the secretary shall correspond to the level of the person's public safety risk. In undertaking supervision of persons under this section, the secretary shall coordinate with any treatment providers designated pursuant to RCW 10.77.150(3), any department of corrections staff designated pursuant to RCW 10.77.150(2), and local law enforcement, if appropriate. The secretary shall adopt rules to implement this section. [2010 c 263 § 9.]

10.77.200 Release—Procedure. (1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for release. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the secretary approves the release he or she then shall authorize the person to petition the court.

(2) In instances in which persons have not made application for release, but the secretary believes, after consideration of the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case, that reasonable grounds exist for release, the secretary may petition the court. If the secretary petitions the court for release under this subsection, notice of the petition must be provided to the person who is the subject of the petition and to his or her attorney.

(3) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the prosecuting attorney's choice. If the petitioner is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the petitioner has a

developmental disability, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(4) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others. Upon a finding that the petitioner has a mental disease or defect in a state of remission under this subsection, the court may deny release, or place or continue such a person on conditional release.

(5) Nothing contained in this chapter shall prohibit the patient from petitioning the court for release or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(6) Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus. [2010 c 263 § 8; 2000 c 94 § 16; 1998 c 297 § 44; 1993 c 31 § 11; 1989 c 420 § 11; 1983 c 25 § 2; 1974 ex.s. c 198 § 16; 1973 1st ex.s. c 117 § 20.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.205 Sexual or violent offenders—Notice of release, escape, etc.—Definitions. (1)(a) At the earliest possible date, and in no event later than thirty days before conditional release, release, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, release, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(d) The thirty-day notice requirement contained in (a) and (b) of this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in (a) and (b) of this subsection shall not require any extension of the release date in the event the release plan changes after notification.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;

(e) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2009 c 521 § 27; 2000 c 94 § 17; 1994 c 129 § 5; 1992 c 186 § 8; 1990 c 3 § 104.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

10.77.207 Persons acquitted of sex offense due to insanity—Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW

4.24.550, to release relevant information necessary to protect the public concerning a person who was acquitted of a sex offense as defined in RCW 9.94A.030 due to insanity and was subsequently committed to the department pursuant to this chapter. [1990 c 3 § 105.]

Additional notes found at www.leg.wa.gov

10.77.210 Right to adequate care and treatment—Records and reports. (1) Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. Except as provided in RCW 10.77.205 and 4.24.550 regarding the release of information concerning insane offenders who are acquitted of sex offenses and subsequently committed pursuant to this chapter, all records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the supervising community corrections officer, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the indeterminate sentence review board if the person was on parole, probation, or community supervision at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter.

(2) All relevant records and reports as defined by the department in rule shall be made available, upon request, to criminal justice agencies as defined in RCW 10.97.030. [1998 c 297 § 45; 1993 c 31 § 12; 1990 c 3 § 108; 1989 c 420 § 12; 1983 c 196 § 3; 1973 1st ex.s. c 117 § 21.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.77.2101 Implementation of legislative intent. In developing rules under RCW 10.77.210(2), the department shall implement the following legislative intent: Increasing public safety; and making decisions based on a person's current conduct and mental condition rather than the classification of the charges. [1998 c 297 § 46.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.220 Incarceration in correctional institution or facility prohibited—Exceptions. No person confined pursuant to this chapter shall be incarcerated in a state correctional institution or facility: PROVIDED, That nothing herein shall prohibit confinement in a mental health facility located wholly within a correctional institution. Confinement in a county jail or other local facility while awaiting either placement in a treatment program or a court hearing pursuant

to this chapter is permitted for no more than seven days. [1982 c 112 § 3; 1974 ex.s. c 198 § 17; 1973 1st ex.s. c 117 § 22.]

10.77.230 Appellate review. Either party may seek appellate review of the judgment of any hearing held pursuant to the provisions of this chapter. [1988 c 202 § 16; 1974 ex.s. c 198 § 18; 1973 1st ex.s. c 117 § 23.]

Rules of court: *Cf. RAP 2.2, 18.22.*

Additional notes found at www.leg.wa.gov

10.77.240 Existing rights not affected. Nothing in this chapter shall prohibit a person presently committed from exercising a right presently available to him or her for obtaining release from confinement, including the right to petition for a writ of habeas corpus. [1999 c 13 § 3; 1973 1st ex.s. c 117 § 24.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

10.77.250 Responsibility for costs—Reimbursement. The department shall be responsible for all costs relating to the evaluation and treatment of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining thereto. Reimbursement may be obtained by the department pursuant to RCW 43.20B.330. [1987 c 75 § 1; 1985 c 245 § 1; 1973 1st ex.s. c 117 § 25.]

Additional notes found at www.leg.wa.gov

10.77.260 Violent act—Presumptions. (1) In determining whether a defendant has committed a violent act the court must:

(a) Presume that a past conviction, guilty plea, or finding of not guilty by reason of insanity establishes the elements necessary for the crime charged;

(b) Consider that the elements of a crime may not be sufficient in themselves to establish that the defendant committed a violent act; and

(c) Presume that the facts underlying the elements, if unrebutted, are sufficient to establish that the defendant committed a violent act.

(2) The presumptions in subsection (1) of this section are rebuttable.

(3) In determining the facts underlying the elements of any crime under subsection (1) of this section, the court may consider information including, but not limited to, the following material relating to the crime:

(a) Affidavits or declarations made under penalty of perjury;

(b) Criminal history record information, as defined in chapter 10.97 RCW; and

(c) Its own or certified copies of another court's records such as criminal complaints, certifications of probable cause to detain, dockets, and orders on judgment and sentencing. [2000 c 74 § 5.]

Additional notes found at www.leg.wa.gov

10.77.270 Independent public safety review panel—Members—Secretary to submit recommendation—Access to records—Support, rules—Report. (1) The secretary shall establish an independent public safety review

panel for the purpose of advising the secretary and the courts with respect to persons who have been found not guilty by reason of insanity. The panel shall provide advice regarding all recommendations: (a) For a change in commitment status; (b) to allow furloughs or temporary leaves accompanied by staff; or (c) to permit movement about the grounds of the treatment facility, with or without the accompaniment of staff.

(2) The members of the public safety review panel shall be appointed by the governor for a renewable term of three years and shall include the following:

- (a) A psychiatrist;
- (b) A licensed clinical psychologist;
- (c) A representative of the department of corrections;
- (d) A prosecutor or a representative of a prosecutor's association;
- (e) A representative of law enforcement or a law enforcement association;
- (f) A consumer and family advocate representative; and
- (g) A public defender or a representative of a defender's association.

(3) Thirty days prior to issuing a recommendation for conditional release under RCW 10.77.150 or forty-five days prior to issuing a recommendation for release under RCW 10.77.200, the secretary shall submit its recommendation with the committed person's application and the department's risk assessment to the public safety review panel. The public safety review panel shall complete an independent assessment of the public safety risk entailed by the secretary's proposed conditional release recommendation or release recommendation and provide this assessment in writing to the secretary. The public safety review panel may, within funds appropriated for this purpose, request additional evaluations of the committed person. The public safety review panel may indicate whether it is in agreement with the secretary's recommendation, or whether it would issue a different recommendation. The secretary shall provide the panel's assessment when it is received along with any supporting documentation, including all previous reports of evaluations of the committed person in the person's hospital record, to the court, prosecutor in the county that ordered the person's commitment, and counsel for the committed person.

(4) The secretary shall notify the public safety review panel at appropriate intervals concerning any changes in the commitment or custody status of persons found not guilty by reason of insanity. The panel shall have access, upon request, to a committed person's complete hospital record.

(5) The department shall provide administrative and financial support to the public safety review panel. The department, in consultation with the public safety review panel, may adopt rules to implement this section.

(6) By December 1, 2014, the public safety review panel shall report to the appropriate legislative committees the following:

- (a) Whether the public safety review panel has observed a change in statewide consistency of evaluations and decisions concerning changes in the commitment status of persons found not guilty by reason of insanity;
- (b) Whether the public safety review panel should be given the authority to make release decisions and monitor release conditions;

(c) Any other issues the public safety review panel deems relevant. [2010 c 263 § 1.]

10.77.810 Joint legislative audit and review committee assessment—Report. The joint legislative audit and review committee shall make an independent assessment of the performance of the state hospitals with respect to provisions specified in RCW 10.77.068, but shall not be required to independently evaluate the exercise of clinical judgment. A report shall be made to the legislature reflecting the committee's findings and recommendations both six and eighteen months following May 1, 2012. The department of social and health services shall cooperate in a timely manner with requests for data and assistance related to this assessment. [2012 c 256 § 9.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

10.77.820 Washington state institute for public policy study—Report. The Washington state institute for public policy shall study and report to the legislature the benefit of standardizing protocols used for treatment to restore competency to stand trial in Washington and during what clinically appropriate time period said treatment may be expected to be effective. The department of social and health services shall cooperate in a timely manner with data requests in service of this study. [2012 c 256 § 10.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

10.77.900 Savings—Construction—1973 1st ex.s. c 117. (1) Any acts done before July 1, 1973 and any proceedings then pending and any constitutional right or any action taken in any proceeding pending under statutes in effect prior to July 1, 1973 are not impaired by this chapter.

(2) This chapter shall also apply to persons committed under prior law as incompetent to stand trial or as being criminally insane and to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of this chapter. [1973 1st ex.s. c 117 § 26.]

10.77.910 Severability—1973 1st ex.s. c 117. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or its application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 117 § 27.]

10.77.920 Chapter successor to *chapter 10.76 RCW. Sections 1 through 27 of this act shall constitute a new chapter in Title 10 RCW, and shall be considered the successor chapter to *chapter 10.76 RCW. [1973 1st ex.s. c 117 § 28.]

***Reviser's note:** Chapter 10.76 RCW was repealed by 1973 1st ex.s. c 117 § 29.

10.77.930 Effective date—1973 1st ex.s. c 117. This act shall take effect on July 1, 1973. [1973 1st ex.s. c 117 § 30.]

10.77.940 Equal application of 1989 c 420—Evaluation for developmental disability. The provisions of chapter 420, Laws of 1989 shall apply equally to persons in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1999 c 13 § 4; 1989 c 420 § 17.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

10.77.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 26.]

Chapter 10.79 RCW SEARCHES AND SEIZURES

Sections

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Controlled substances, search and seizure: RCW 69.50.509.

10.79.015 Other grounds for issuance of search warrant. Any such magistrate, when satisfied that there is rea-

sonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of RCW 9.26A.110 or 9.26A.115. [2003 c 53 § 94; 1980 c 52 § 1; 1972 ex.s. c 75 § 2; 1969 c 83 § 1; 1949 c 86 § 1; Code 1881 § 986; 1873 p 216 § 154; 1854 p 101 § 2; Rem. Supp. 1949 § 2238. Formerly RCW 10.79.010, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

10.79.020 To whom directed—Contents. All such warrants shall be directed to the sheriff of the county, or his or her deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he or she is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case. [2010 c 8 § 1061; Code 1881 § 969; 1873 p 216 § 155; 1854 p 101 § 3; RRS § 2239.]

10.79.040 Search without warrant unlawful—Penalty. (1) It shall be unlawful for any police officer or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided.

(2) Any police officer or other peace officer violating the provisions of this section is guilty of a gross misdemeanor. [2010 c 8 § 1062; 2003 c 53 § 95; 1921 c 71 § 1; RRS § 2240-1. FORMER PART OF SECTION: 1921 c 71 § 2; RRS § 2240-2, now codified as RCW 10.79.045.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

10.79.050 Restoration of stolen property to owner—Duties of officers. All property obtained by larceny, robbery

or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his or her rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he or she shall be answerable for the same, and shall annex a schedule thereof to his or her return of the warrant. [2010 c 8 § 1063; Code 1881 § 851; 1873 p 192 § 57; 1854 p 84 § 51; RRS § 2129.]

10.79.060 Strip, body cavity searches—Legislative intent. It is the intent of the legislature to establish policies regarding the practice of strip searching persons booked into holding, detention, or local correctional facilities. It is the intent of the legislature to restrict the practice of strip searching and body cavity searching persons booked into holding, detention, or local correctional facilities to those situations where such searches are necessary. [1983 1st ex.s. c 42 § 1.]

Additional notes found at www.leg.wa.gov

10.79.070 Strip, body cavity searches—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 10.79.060 through 10.79.110.

(1) "Strip search" means having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus, or undergarments of the person or breasts of a female person.

(2) "Body cavity search" means the touching or probing of a person's body cavity, whether or not there is actual penetration of the body cavity.

(3) "Body cavity" means the stomach or rectum of a person and the vagina of a female person.

(4) "Law enforcement agency" and "law enforcement officer" include local departments of corrections created pursuant to *RCW 70.48.090(3) and employees thereof. [1983 1st ex.s. c 42 § 2.]

*Reviser's note: RCW 70.48.090 was amended by 2007 c 13 § 1, changing subsection (3) to subsection (4).

Additional notes found at www.leg.wa.gov

10.79.080 Strip, body cavity searches—Warrant, authorization, report. (1) No person may be subjected to a body cavity search by or at the direction of a law enforcement agency unless a search warrant is issued pursuant to superior court criminal rules.

(2) No law enforcement officer may seek a warrant for a body cavity search without first obtaining specific authorization for the body cavity search from the ranking shift supervisor of the law enforcement authority. Authorization for the body cavity search may be obtained electronically: PROVIDED, That such electronic authorization shall be reduced to writing by the law enforcement officer seeking the authorization and signed by the ranking supervisor as soon as possible thereafter.

(3) Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things other-

wise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.

(4) A law enforcement officer requesting a body cavity search shall prepare and sign a report regarding the body cavity search. The report shall include:

(a) A copy of the written authorization required under subsection (2) of this section;

(b) A copy of the warrant and any supporting documents required under subsection (1) of this section;

(c) The name and sex of all persons conducting or observing the search;

(d) The time, date, place, and description of the search; and

(e) A statement of the results of the search and a list of any items removed from the person as a result of the search.

The report shall be retained as part of the law enforcement agency's records. [1983 1st ex.s. c 42 § 3.]

Additional notes found at www.leg.wa.gov

10.79.090 Strip, body cavity searches—Medical care not precluded. Nothing in RCW 10.79.080 or this section may be construed as precluding or preventing the administration of medical care to persons requiring immediate medical care or requesting medical care. [1983 1st ex.s. c 42 § 4.]

Additional notes found at www.leg.wa.gov

10.79.100 Strip, body cavity searches—Standards for conducting. (1) Persons conducting a strip search shall not touch the person being searched except as reasonably necessary to effectuate the strip search of the person.

(2) Any body cavity search must be performed under sanitary conditions and conducted by a physician, registered nurse, or physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search. No health professional authorized by this subsection to conduct a body cavity search shall be held liable in any civil action if the search is conducted in a manner that meets the standards and requirements of RCW 4.24.290 and 7.70.040.

(3) Except as provided in subsection (7) of this section, a strip search or body cavity search, as well as presearch undressing or postsearch dressing, shall occur at a location made private from the observation of persons not physically conducting the search. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as required by subsection (2) of this section.

(4) Except as provided in subsection (5) of this section, no person may be present or observe during the search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search.

(5) Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.

(6) RCW 10.79.080 and this section shall not be interpreted as expanding or diminishing the authority of a law enforcement officer with respect to searches incident to arrest or investigatory stop in public.

(7) A strip search of a person housed in a holding, detention, or local correctional facility to search for and seize a weapon may be conducted at other than a private location if there arises a specific threat to institutional security that reasonably requires such a search or if all persons in the facility are being searched for the discovery of weapons or contraband. [1983 1st ex.s. c 42 § 5.]

Additional notes found at www.leg.wa.gov

10.79.110 Strip, body cavity searches—Actions for damages, injunctive relief. (1) A person who suffers damage or harm as a result of a violation of RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170 may bring a civil action to recover actual damages sustained by him or her. The court may, in its discretion, award injunctive and declaratory relief as it deems necessary.

(2) RCW 10.79.080, 10.79.090, 10.79.100, and 10.79.130 through 10.79.170 shall not be construed as limiting any constitutional, common law, or statutory right of any person regarding any action for damages or injunctive relief, or as precluding the prosecution under another provision of law of any law enforcement officer or other person who has violated RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170. [1986 c 88 § 7; 1983 1st ex.s. c 42 § 6.]

Additional notes found at www.leg.wa.gov

10.79.120 Strip, body cavity searches—Application of RCW 10.79.130 through 10.79.160. RCW 10.79.130 through 10.79.160 apply to any person in custody at a holding, detention, or local correctional facility, other than a person committed to incarceration by order of a court, regardless of whether an arrest warrant or other court order was issued before the person was arrested or otherwise taken into custody unless the court issuing the warrant has determined that the person shall not be released on personal recognizance, bail, or bond. RCW 10.79.130 through 10.79.160 do not apply to a person held for post-conviction incarceration for a criminal offense. The definitions and remedies provided by RCW 10.79.070 and 10.79.110 apply to RCW 10.79.130 through 10.79.160. [1986 c 88 § 1.]

10.79.130 Strip, body cavity searches—Warrant required—Exceptions. (1) No person to whom this section is made applicable by RCW 10.79.120 may be strip searched without a warrant unless:

(a) There is a reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other thing concealed on the body of the person to be searched, that constitutes a threat to the security of a holding, detention, or local correctional facility;

(b) There is probable cause to believe that a strip search is necessary to discover other criminal evidence concealed on the body of the person to be searched, but not constituting a threat to facility security; or

(c) There is a reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.

(2) For the purposes of subsection (1) of this section, a reasonable suspicion is deemed to be present when the person to be searched has been arrested for:

(a) A violent offense as defined in RCW 9.94A.030 or any successor statute;

(b) An offense involving escape, burglary, or the use of a deadly weapon; or

(c) An offense involving possession of a drug or controlled substance under chapter 69.41, 69.50, or 69.52 RCW or any successor statute. [1986 c 88 § 2.]

10.79.140 Strip, body cavity searches—Uncategorized searches—Determination of reasonable suspicion, probable cause—Less-intrusive alternatives. (1) A person to whom this section is made applicable by RCW 10.79.120 who has not been arrested for an offense within one of the categories specified in RCW 10.79.130(2) may nevertheless be strip searched, but only upon an individualized determination of reasonable suspicion or probable cause as provided in this section.

(2) With the exception of those situations in which reasonable suspicion is deemed to be present under RCW 10.79.130(2), no strip search may be conducted without the specific prior written approval of the jail unit supervisor on duty. Before any strip search is conducted, reasonable efforts must be made to use other less-intrusive means, such as pat-down, electronic metal detector, or clothing searches, to determine whether a weapon, criminal evidence, contraband, or other thing is concealed on the body, or whether a health condition requiring immediate medical attention is present. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be made only after such less-intrusive means have been used and shall be based on a consideration of all information and circumstances known to the officer authorizing the strip search, including but not limited to the following factors:

(a) The nature of the offense for which the person to be searched was arrested;

(b) The prior criminal record of the person to be searched; and

(c) Physically violent behavior of the person to be searched, during or after the arrest. [1986 c 88 § 3.]

10.79.150 Strip, body cavity searches—Written record required, contents—Unnecessary persons prohibited. (1) A written record of any strip search shall be maintained in the individual file of each person strip searched.

(2) With respect to any strip search conducted under RCW 10.79.140, the record shall contain the following information:

(a) The name of the supervisor authorizing the strip search;

(b) The specific facts constituting reasonable suspicion to believe that the strip search was necessary;

(c) The name and serial number of the officer conducting the strip search and of all other persons present or observing during any part of the strip search;

(d) The time, date, and place of the strip search; and

(e) Any weapons, criminal evidence, contraband, or other thing, or health condition discovered as a result of the strip search.

(3) With respect to any strip search conducted under RCW 10.79.130(2), the record shall contain, in addition to the offense or offenses for which the person searched was arrested, the information required by subsection (2)(c), (d), and (e) of this section.

(4) The record may be included or incorporated in existing forms used by the facility, including the booking form required under the Washington Administrative Code. A notation of the name of the person strip searched shall also be entered in the log of daily activities or other chronological record, if any, maintained pursuant to the Washington Administrative Code.

(5) Except at the request of the person to be searched, no person may be present or observe during the strip search unless necessary to conduct the search. [1986 c 88 § 4.]

10.79.160 Strip, body cavity searches—Physical examinations for public health purposes excluded. Physical examinations conducted by licensed medical professionals solely for public health purposes under separate statutory authority shall not be considered searches for purposes of RCW 10.79.120, 10.79.130, and 10.79.140. [1986 c 88 § 5.]

10.79.170 Strip, body cavity searches—Nonliability when search delayed. No governmental entity and no employee or contracting agent of a governmental entity shall be liable for injury, death, or damage caused by a person in custody when the injury, death, or damage is caused by or made possible by contraband that would have been discovered sooner but for the delay caused by having to seek a search warrant under RCW 10.79.080 or 10.79.130 through 10.79.160. [1986 c 88 § 6.]

Chapter 10.82 RCW COLLECTION AND DISPOSITION OF FINES AND COSTS

Sections

10.82.010	Execution for fines and costs.
10.82.020	Stay of execution for sixty days on recognizance.
10.82.025	Effect of recognizance—Execution of judgment after sixty days.
10.82.030	Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement.
10.82.040	Commitment for failure to pay fine and costs—Reduction of amount by performance of labor.
10.82.070	Disposition of monetary payments.
10.82.080	Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments.
10.82.090	Interest on judgments—Disposition of nonrestitution interest.

City, county jail prisoners may be compelled to work: RCW 9.92.130, 9.92.140, 36.28.100.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection procedure, liability for, commitment for failure to pay, execution: RCW 10.01.160 through 10.01.180.

Jury fee disposition: RCW 10.46.190.

Payment of fine and costs in installments: RCW 9.92.070, 10.01.170.

10.82.010 Execution for fines and costs. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions. [Code 1881 § 1120; 1873 p 242 § 278; 1854 p 123 § 142; RRS § 2201.]

(2012 Ed.)

Judgments a lien on realty: RCW 10.64.080.

10.82.020 Stay of execution for sixty days on recognizance. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed and costs for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs. [Code 1881 § 1123; 1873 p 242 § 281; 1854 p 124 § 145; RRS § 2204. FORMER PART OF SECTION: Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205, now codified as RCW 10.82.025.]

10.82.025 Effect of recognizance—Execution of judgment after sixty days. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in *this act, in committal for default to pay or secure the fine and costs. [Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205. Formerly RCW 10.82.020, part.]

**Reviser's note:* The term "this act" apparently refers to "An act to regulate the practice and pleadings in prosecutions for crimes" first enacted by Laws of 1854, page 100.

10.82.030 Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement. If any person ordered into custody until the fine and costs adjudged against him or her be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him or her to imprison such defendant in the county jail until the amount of such fine and costs owing are paid. Execution may at any time issue against the property of the defendant for that portion of such fine and costs not reduced by the application of this section. The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned. [2010 c 8 § 1064; 1991 c 183 § 1; 1983 c 276 § 2; 1967 c 200 § 4; 1891 c 28 § 84; 1883 p 38 § 1, part; Code 1881 § 1125; 1873 p 243 § 283; 1854 p 124 § 147; RRS § 2206. Formerly RCW 10.82.030 and 10.82.050.]

Commitment until fines and costs are paid: RCW 10.70.010.

Fine and costs, liability of defendant, collection procedure, contempt, commitment, execution: RCW 10.01.160 through 10.01.180.

Additional notes found at www.leg.wa.gov

10.82.040 Commitment for failure to pay fine and costs—Reduction of amount by performance of labor. When a defendant is committed to jail, on failure to pay any fines and costs, he or she shall, under the supervision of the

county sheriff and subject to the terms of any ordinances adopted by the county commissioners, be permitted to perform labor to reduce the amount owing of the fine and costs. [2010 c 8 § 1065; 1967 c 200 § 5; 1883 p 38 § 1, part; Code 1881 § 1129; 1877 p 206 § 8; 1873 p 243 § 287; 1854 p 124 § 151; RRS § 2209, part.]

Additional notes found at www.leg.wa.gov

10.82.070 Disposition of monetary payments. (1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit in the state general fund and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed. [2012 c 136 § 6; 2012 c 134 § 8; 2009 c 479 § 13; 2004 c 15 § 6; 1995 c 292 § 3; 1988 c 169 § 5; 1987 c 202 § 169; 1985 c 389 § 7; 1984 c 258 § 313; 1969 ex.s. c 199 § 11; 1967 c 122 § 1; 1965 c 158 § 16; 1919 c 30 § 1; 1909 p 323 § 9; 1897 c 118 § 113; 1895 c 68 § 1; 1890 p 383 § 89; 1886 p 20 § 58; Code 1881 § 3211; 1873 p 421 § 3; RRS § 4940. Formerly codified as RCW 9.01.140.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2004 c 15: See note following RCW 10.99.080.

Intent—1987 c 202: See note following RCW 2.04.190.

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

10.82.080 Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments. (1) When a superior court has, as a condition of the sentence for a person convicted of the unlawful receipt of public assistance, ordered restitution to the state of that overpayment or a portion thereof:

(a) The department of social and health services shall deduct the overpayment from subsequent assistance pay-

ments as provided in RCW 43.20B.630, when the person is receiving public assistance; or

(b) Ordered restitution payments may be made at the direction of the court to the clerk of the appropriate county or directly to the department of social and health services when the person is not receiving public assistance.

(2) However, if payments are received by the county clerk, each payment shall be transmitted to the department of social and health services within forty-five days after receipt by the county. [1987 c 75 § 2; 1985 c 245 § 2; 1982 c 201 § 1.]

Additional notes found at www.leg.wa.gov

10.82.090 Interest on judgments—Disposition of nonrestitution interest. (1) Except as provided in subsection (2) of this section, financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

(2) The court may, on motion by the offender, following the offender's release from total confinement, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction as follows:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued during the term of total confinement for the conviction giving rise to the financial obligations, provided the offender shows that the interest creates a hardship for the offender or his or her immediate family;

(b) The court may reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full;

(c) The court may otherwise reduce or waive the interest on the portions of the legal financial obligations that are not restitution if the offender shows that he or she has personally made a good faith effort to pay and that the interest accrual is causing a significant hardship. For purposes of this section, "good faith effort" means that the offender has either (i) paid the principal amount in full; or (ii) made at least fifteen monthly payments within an eighteen-month period, excluding any payments mandatorily deducted by the department of corrections;

(d) For purposes of (a) through (c) of this subsection, the court may reduce or waive interest on legal financial obligations only as an incentive for the offender to meet his or her legal financial obligations. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest.

(3) This section applies to persons convicted as adults or adjudicated in juvenile court. [2011 c 106 § 2; 2009 c 479 § 14; 2004 c 121 § 1; 1995 c 291 § 7; 1989 c 276 § 3.]

Finding—2011 c 106: "(1) The legislature finds that it is in the interest of the public to promote the reintegration into society of individuals convicted of crimes. Research indicates that legal financial obligations may

constitute a significant barrier to successful reintegration. The legislature further recognizes that the accrual of interest on nonrestitution debt during the term of incarceration results in many individuals leaving prison with insurmountable debt. These circumstances make it less likely that restitution will be paid in full and more likely that former offenders and their families will remain in poverty. In order to foster reintegration, this act creates a mechanism for courts to eliminate interest accrued on nonrestitution debt during incarceration and improves incentives for payment of legal financial obligations.

(2) At the same time, the legislature believes that payment of legal financial obligations is an important part of taking personal responsibility for one's actions. The legislature therefore, supports the efforts of county clerks in taking collection action against those who do not make a good faith effort to pay." [2011 c 106 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

Chapter 10.85 RCW REWARDS

Sections

10.85.030	Rewards by counties, cities, towns, port commissions authorized.
10.85.040	Conflicting claims.
10.85.050	Payment of rewards.
10.85.900	Severability—1979 ex.s. c 53.

Offer of rewards by governor: RCW 43.06.010(8).

10.85.030 Rewards by counties, cities, towns, port commissions authorized. The legislative authority of any county in the state, a port commission, or the governing body of a city or town, when in its opinion the public good requires it, is hereby authorized to offer and pay a suitable reward to any person or persons for information leading to:

(a) The arrest of a specified person or persons convicted of or charged with any criminal offense; or

(b) The arrest and conviction of a person or persons committing a specified criminal offense.

In the event of crimes against county, port district, city, or town property, including but not limited to road signs, vehicles, buildings, or any other type of county, port district, city, or town property, the legislative authority of any county, a port commission, or the governing body of a city or town may offer and pay a suitable reward to any person or persons who shall furnish information leading to the arrest and conviction of any person of any offense against this county, port district, city, or town property, including but not limited to those offenses set forth in RCW 9A.48.070 through 9A.48.090, whether or not the offense is a felony, gross misdemeanor, or misdemeanor. [1986 c 185 § 1; 1981 c 211 § 1; 1979 ex.s. c 53 § 1; 1975-'76 2nd ex.s. c 25 § 1; 1886 p 124 § 1; RRS § 2249.]

10.85.040 Conflicting claims. When more than one claimant applies for the payment of any reward, offered by any county legislative authority, board of commissioners of a port district, or city or town governing body, the county legislative authority, board of commissioners of a port district, or city or town governing body shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive. [1986 c 185 § 2; 1979 ex.s. c 53 § 2; 1886 p 124 § 3; RRS § 2251.]

(2012 Ed.)

10.85.050 Payment of rewards. Whenever any reward has been offered by any county legislative authority, board of commissioners of a port district, or city or town governing body in the state under RCW 10.85.030, the person or persons providing the information shall be entitled to the reward, and the county legislative authority, board of commissioners of a port district, or city or town governing body which has offered the reward is authorized to draw a warrant or warrants out of any money in the county, port district, or city or town treasury, as appropriate, not otherwise appropriated. [1986 c 185 § 3; 1979 ex.s. c 53 § 3; 1886 p 124 § 2; RRS § 2250.]

10.85.900 Severability—1979 ex.s. c 53. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 53 § 6.]

Chapter 10.88 RCW UNIFORM CRIMINAL EXTRADITION ACT

Sections

10.88.200	Definitions.
10.88.210	Authority of governor.
10.88.220	Demand for extradition—Requirements.
10.88.230	Investigation of demand—Report.
10.88.240	Return or surrender of person charged in another state.
10.88.250	Surrender of person charged with crime committed in state other than demanding state.
10.88.260	Warrant of arrest.
10.88.270	Authority of officer or other person under warrant.
10.88.280	Authority to command assistance.
10.88.290	Rights of person arrested.
10.88.300	Delivery of person in violation of RCW 10.88.290—Penalty.
10.88.310	Confinement of prisoner.
10.88.320	Charge or complaint—Warrant of arrest.
10.88.330	Arrest without warrant.
10.88.340	Preliminary examination—Commitment.
10.88.350	Bail.
10.88.360	Failure to make timely arrest or demand for extradition.
10.88.370	Failure to appear—Bond forfeiture—Arrest—Recovery on bond.
10.88.380	Pending criminal prosecution in this state.
10.88.390	Recall or reissuance of warrant.
10.88.400	Demand by governor of this state for extradition—Warrant—Agent.
10.88.410	Application for requisition for return of person—Contents—Affidavits—Copies.
10.88.415	Delivery without governor's warrant.
10.88.420	Civil process—Service on extradited person.
10.88.430	Waiver of extradition.
10.88.440	Rights, powers, privileges or jurisdiction of state not waived.
10.88.450	Trial for other crimes.
10.88.460	Extradition or surrender of obligor—Uniform interstate family support act.
10.88.900	Construction—1971 ex.s. c 46.
10.88.910	Short title.
10.88.920	Effective date—1971 ex.s. c 46.
10.88.930	Severability—1971 ex.s. c 46.

Fugitives of this state: Chapter 10.34 RCW.

Interstate compact on juveniles: Chapter 13.24 RCW.

Return of parole violators from another state: RCW 9.95.280 through 9.95.300.

10.88.200 Definitions. Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state" referring to a state other than this state refers to any other state, or the District of

Columbia, or territory organized or unorganized of the United States of America. [1971 ex.s. c 46 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." This act [1971 ex.s. c 46] consists of this chapter, the 1971 amendment of RCW 26.21.050, and the repeal of RCW 10.88.010 through 10.88.060.

10.88.210 Authority of governor. Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, the governor of this state may in his or her discretion have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [2010 c 8 § 1066; 1971 ex.s. c 46 § 2.]

10.88.220 Demand for extradition—Requirements. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his or her bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be certified or authenticated by the executive authority making the demand. [2010 c 8 § 1067; 1971 ex.s. c 46 § 3.]

10.88.230 Investigation of demand—Report. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether he or she ought to be surrendered. [2010 c 8 § 1068; 1971 ex.s. c 46 § 4.]

10.88.240 Return or surrender of person charged in another state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him or her in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his or her term of sentence in such other state, upon condition that such person be returned to

such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in RCW 10.88.410 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [2010 c 8 § 1069; 1971 ex.s. c 46 § 5.]

10.88.250 Surrender of person charged with crime committed in state other than demanding state. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in RCW 10.88.220 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. [1971 ex.s. c 46 § 6.]

10.88.260 Warrant of arrest. If the governor decides that the demand should be complied with, he or she shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he or she may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [2010 c 8 § 1070; 1971 ex.s. c 46 § 7.]

10.88.270 Authority of officer or other person under warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he or she may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state. [2010 c 8 § 1071; 1971 ex.s. c 46 § 8.]

10.88.280 Authority to command assistance. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [1971 ex.s. c 46 § 9.]

10.88.290 Rights of person arrested. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him or her shall have appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel; and if the prisoner or his or her counsel shall state that he or she or they desire to test the legality of his or her arrest, the judge of such court of

record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state: PROVIDED, That the hearing provided for in this section shall not be available except as may be constitutionally required if a hearing on the legality of arrest has been held pursuant to RCW 10.88.320 or 10.88.330. [2010 c 8 § 1072; 1971 ex.s. c 46 § 10.]

10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty. Any officer who shall deliver to the agent for extradition of the demanding state a person in his or her custody under the governor's warrant, in wilful [willful] disobedience to RCW 10.88.290, shall be guilty of a gross misdemeanor and, on conviction, shall be imprisoned in the county jail for up to three hundred sixty-four days, or be fined not more than one thousand dollars, or both. [2011 c 96 § 14; 2010 c 8 § 1073; 1971 ex.s. c 46 § 11.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

10.88.310 Confinement of prisoner. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, such officer or agent, however, being chargeable with the expense of keeping: PROVIDED, HOWEVER, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he or she is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [2010 c 8 § 1074; 1971 ex.s. c 46 § 12.]

10.88.320 Charge or complaint—Warrant of arrest. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under RCW 10.88.250, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or

parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under RCW 10.88.250, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [2010 c 8 § 1075; 1971 ex.s. c 46 § 13.]

10.88.330 Arrest without warrant. (1) The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him or her under oath setting forth the ground for the arrest as in RCW 10.88.320; and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant.

(2) An officer of the United States customs service or the immigration and naturalization service may, without a warrant, arrest a person if:

(a) The officer is on duty;

(b) One or more of the following situations exists:

(i) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 9A.36 RCW, against the officer or against any other person in the presence of the officer;

(ii) The person commits an assault or related crime while armed, defined and punishable under chapter 9.41 RCW, against the officer or against any other person in the presence of the officer;

(iii) The officer has reasonable cause to believe that a crime as defined in (b)(i) or (ii) of this subsection has been committed and reasonable cause to believe that the person to be arrested has committed it;

(iv) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it; or

(v) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest; and

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that officer to enforce or administer this subsection. [2010 c 8 § 1076; 1979 ex.s. c 244 § 16; 1971 ex.s. c 46 § 14.]

Additional notes found at www.leg.wa.gov

10.88.340 Preliminary examination—Commitment.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under RCW 10.88.250, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in RCW 10.88.350, or until he or she shall be legally discharged. [2010 c 8 § 1077; 1971 ex.s. c 46 § 15.]

10.88.350 Bail. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he or she deems proper, conditioned for his or her appearance before him or her at a time specified in such a bond, and for his or her surrender, to be arrested upon the warrant of the governor of this state. [2010 c 8 § 1078; 1971 ex.s. c 46 § 16.]

10.88.360 Failure to make timely arrest or demand for extradition. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his or her appearance and surrender, as provided in RCW 10.88.350, but within a period not to exceed sixty days after the date of such new bond: PROVIDED, That the governor may, except in cases in which the offense is punishable under laws of the demanding state by death or life imprisonment, deny a demand for extradition when such demand is not received by the governor before the expiration of one hundred twenty days from the date of arrest in this state of the alleged fugitive, in the absence of a showing of good cause for such delay. [2010 c 8 § 1079; 1971 ex.s. c 46 § 17.]

10.88.370 Failure to appear—Bond forfeiture—Arrest—Recovery on bond. If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. [2010 c 8 § 1080; 1971 ex.s. c 46 § 18.]

10.88.380 Pending criminal prosecution in this state. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his or her discretion, either may surrender him or her

on demand of the executive authority of another state or hold him or her until he or she has been tried and discharged or convicted and punished in this state. [2010 c 8 § 1081; 1971 ex.s. c 46 § 19.]

10.88.390 Recall or reissuance of warrant. The governor may recall his or her warrant of arrest or may issue another warrant whenever he or she deems proper. [2010 c 8 § 1082; 1971 ex.s. c 46 § 20.]

10.88.400 Demand by governor of this state for extradition—Warrant—Agent. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his or her bail, probation, or parole in this state, from the executive authority of any other state, or from the appropriate authority of the District of Columbia authorized to receive such demand under the laws of the United States, he or she shall issue a warrant under the seal of this state, to some agent, commanding him or her to receive the person so charged if delivered to him or her and convey him or her to the proper officer of the county in this state in which the offense was committed. [2010 c 8 § 1083; 1971 ex.s. c 46 § 21.]

10.88.410 Application for requisition for return of person—Contents—Affidavits—Copies. (1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his or her written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him or her, the approximate time, place, and circumstances of its commission, the state in which he or she is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his or her bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he or she was convicted, the circumstances of his or her escape from confinement or of the breach of the terms of his or her bail, probation, or parole, the state in which he or she is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in dupli-

cate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [2010 c 8 § 1084; 1971 ex.s. c 46 § 22.]

10.88.415 Delivery without governor's warrant. A law enforcement agency shall deliver a person in custody to the accredited agent or agents of a demanding state without the governor's warrant provided that:

(1) Such person is alleged to have broken the terms of his or her probation, parole, bail, or any other release of the demanding state; and

(2) The law enforcement agency has received from the demanding state an authenticated copy of a prior waiver of extradition signed by such person as a term of his or her probation, parole, bail, or any other release of the demanding state and photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver. [2001 c 264 § 6.]

Additional notes found at www.leg.wa.gov

10.88.420 Civil process—Service on extradited person. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he or she is being or has been returned, until he or she has been finally convicted in the criminal proceeding, or, if acquitted, until he or she has had reasonable opportunity to return to the state from which he or she was extradited. [2010 c 8 § 1085; 1971 ex.s. c 46 § 23.]

10.88.430 Waiver of extradition. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in RCW 10.88.260 and 10.88.270 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he or she consents to return to the demanding state: PROVIDED, HOWEVER, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in RCW 10.88.290.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: PROVIDED, HOWEVER, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without for-

malty to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state. [2010 c 8 § 1086; 1971 ex.s. c 46 § 24.]

10.88.440 Rights, powers, privileges or jurisdiction of state not waived. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [1971 ex.s. c 46 § 25.]

10.88.450 Trial for other crimes. After a person has been brought back to this state by, or after waiver of extradition proceedings, he or she may be tried in this state for other crimes which he or she may be charged with having committed here as well as that specified in the requisition for his or her extradition. [2010 c 8 § 1087; 1971 ex.s. c 46 § 26.]

10.88.460 Extradition or surrender of obligor—Uniform interstate family support act. See chapter 26.21A RCW.

10.88.900 Construction—1971 ex.s. c 46. The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it, to the extent which it has been enacted by this state. [1971 ex.s. c 46 § 27.]

10.88.910 Short title. RCW 10.88.200 through 10.88.450 shall be known and may be cited as the Uniform Criminal Extradition Act. [1971 ex.s. c 46 § 28.]

10.88.920 Effective date—1971 ex.s. c 46. This act shall become effective on July 1, 1971. [1971 ex.s. c 46 § 29.]

10.88.930 Severability—1971 ex.s. c 46. If any provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1971 ex.s. c 46 § 32.]

Chapter 10.89 RCW UNIFORM ACT ON FRESH PURSUIT

Sections

10.89.010	Authority of foreign peace officer.
10.89.020	Preliminary examination by magistrate.
10.89.030	Construction as to lawfulness of arrest.
10.89.040	"State" includes District of Columbia.
10.89.050	"Fresh pursuit" defined.
10.89.060	Duty to send copies to other states.
10.89.070	Severability—1943 c 261.
10.89.080	Short title.

10.89.010 Authority of foreign peace officer. Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest the person on the ground that he or she is believed to have committed a felony in such other state or a violation of the laws of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he or she is believed to have committed a felony or a violation of the laws of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving in this state. [1998 c 205 § 1; 1943 c 261 § 1; Rem. Supp. 1943 § 2252-1. Formerly RCW 10.88.070.]

10.89.020 Preliminary examination by magistrate. If an arrest is made in this state by an officer of another state in accordance with the provisions of RCW 10.89.010, he or she shall, without unnecessary delay, take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he or she shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the magistrate determines that the arrest was unlawful, he or she shall discharge the person arrested. [2010 c 8 § 1088; 1943 c 261 § 2; Rem. Supp. 1943 § 2252-2. Formerly RCW 10.88.080.]

10.89.030 Construction as to lawfulness of arrest. RCW 10.89.010 shall not be construed so as to make unlawful any arrest in this state which otherwise would be lawful. [1943 c 261 § 3; Rem. Supp. 1943 § 2252-3. Formerly RCW 10.88.100.]

10.89.040 "State" includes District of Columbia. For the purpose of this chapter the word "state" shall include the District of Columbia. [1943 c 261 § 4; Rem. Supp. 1943 § 2252-4. Formerly RCW 10.88.110.]

10.89.050 "Fresh pursuit" defined. The term "fresh pursuit" as used in this chapter, shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony or a violation of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving. It shall also include the pursuit of a person suspected of having committed a supposed felony, or a supposed violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving, though no felony or violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving actually has been committed, if

there is reasonable ground for believing that a felony or a violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [1998 c 205 § 2; 1943 c 261 § 5; Rem. Supp. 1943 § 2252-5. Formerly RCW 10.88.090.]

10.89.060 Duty to send copies to other states. Upon the passage and approval by the governor of this chapter, it shall be the duty of the secretary of state, or other officer, to certify a copy of this chapter to the executive department of each of the states of the United States. [1943 c 261 § 6; Rem. Supp. 1943 § 2252-6.]

10.89.070 Severability—1943 c 261. If any part of this chapter is for any reason declared void, it is declared to be the intent of this chapter that such invalidity shall not affect the validity of the remaining portions of this chapter. [1943 c 261 § 7; Rem. Supp. 1943 § 2252-7.]

10.89.080 Short title. This chapter may be cited as the "Uniform Act on Fresh Pursuit." [1943 c 261 § 8; Rem. Supp. 1943 § 2252-8.]

Chapter 10.91 RCW UNIFORM RENDITION OF ACCUSED PERSONS ACT

Sections

10.91.010	Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation.
10.91.020	Preliminary hearing—Waiver—Conditions of release.
10.91.030	Preliminary hearing—Investigation report—Findings—Order authorizing return.
10.91.040	"Judicial officer of this state," "judicial officer" defined.
10.91.050	Costs.
10.91.900	Severability—1971 ex.s. c 17.
10.91.910	Construction—1971 ex.s. c 17.
10.91.920	Short title.

10.91.010 Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation.

(1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his or her release, and is present in this state, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his or her return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a judicial officer of this state the following documents:

(a) An affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him or her;

(b) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) A certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is a probable cause for believing that the person whose removal is sought has violated the terms or conditions of his or her release, the judicial officer shall issue a warrant to a law enforcement officer of this state for the person's arrest.

(3) The judicial officer shall notify the prosecuting attorney of his or her action and shall direct him or her to investigate the case to ascertain the validity of the affidavits and documents required by subsection (1) of this section and the identity and authority of the affiant. [2010 c 8 § 1089; 1971 ex.s. c 17 § 2.]

10.91.020 Preliminary hearing—Waiver—Conditions of release. (1) The person whose removal is sought shall be brought before the judicial officer without unnecessary delay upon arrest pursuant to the warrant; whereupon the judicial officer shall set a time and place for hearing, and shall advise the person of his or her right to have the assistance of counsel, to confront the witnesses against him or her, and to produce evidence in his or her own behalf at the hearing.

(2) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judicial officer shall issue an order pursuant to RCW 10.91.030.

(3) The judicial officer may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose removal is sought. [2010 c 8 § 1090; 1971 ex.s. c 17 § 3.]

10.91.030 Preliminary hearing—Investigation report—Findings—Order authorizing return. The prosecuting attorney shall appear at the hearing and report to the judicial officer the results of his or her investigation. If the judicial officer finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his or her release, the judicial officer shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith. [2010 c 8 § 1091; 1971 ex.s. c 17 § 4.]

10.91.040 "Judicial officer of this state," "judicial officer" defined. For the purpose of this chapter "judicial officer of this state" and "judicial officer" mean a judge of the superior or district court. [1987 c 202 § 170; 1971 ex.s. c 17 § 5.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.91.050 Costs. The costs of the procedures required by this chapter shall be borne by the demanding state, except when the designated agent is not a public official. In any case

when the designated agent is not a public official, he or she shall bear the cost of such procedures. [2010 c 8 § 1092; 1971 ex.s. c 17 § 9.]

10.91.900 Severability—1971 ex.s. c 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 17 § 6.]

10.91.910 Construction—1971 ex.s. c 17. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1971 ex.s. c 17 § 7.]

10.91.920 Short title. This chapter may be cited as the "Uniform Rendition of Accused Persons Act." [1971 ex.s. c 17 § 8.]

Chapter 10.92 RCW TRIBAL POLICE OFFICERS

Sections

10.92.010	Definitions.
10.92.020	Powers—Authority to act as general authority Washington peace officer—Public liability and property damage insurance—Training requirements—Issuance of citation, notice of infraction, or incident report—Jurisdiction—Civil liability—Sovereign tribal governments—Interlocal agreement.

10.92.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "General authority Washington peace officer" means an officer authorized to enforce the criminal and traffic laws of the state of Washington generally.

(2) "Tribal police officer" means any person in the employ of one of the federally recognized sovereign tribal governments, whose traditional lands and territories lie within the borders of the state of Washington, to enforce the criminal laws of that government. [2008 c 224 § 1.]

Effective date—2008 c 224: "This act takes effect July 1, 2008." [2008 c 224 § 4.]

10.92.020 Powers—Authority to act as general authority Washington peace officer—Public liability and property damage insurance—Training requirements—Issuance of citation, notice of infraction, or incident report—Jurisdiction—Civil liability—Sovereign tribal governments—Interlocal agreement. (1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.

(2) A tribal police officer may exercise the powers of law enforcement of a general authority Washington peace officer under this section, subject to the following:

(a) The appropriate sovereign tribal nation shall submit to the department of enterprise services proof of public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state. For purposes of determining adequacy of insurance liability, the sovereign tribal government must submit with the proof of liability insurance a copy of the interlocal agreement between the sovereign tribal government and the local governments that have shared jurisdiction under this chapter where such an agreement has been reached pursuant to subsection (10) of this section.

(i) Within the thirty days of receipt of the information from the sovereign tribal nation, the department of enterprise services shall either approve or reject the adequacy of insurance, giving consideration to the scope of the interlocal agreement. The adequacy of insurance under this chapter shall be subject to annual review by the department of enterprise services.

(ii) Each policy of insurance issued under this chapter must include a provision that the insurance shall be available to satisfy settlements or judgments arising from the tortious conduct of tribal police officers when acting in the capacity of a general authority Washington peace officer, and that to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct.

(b) The appropriate sovereign tribal nation shall submit to the department of enterprise services proof of training requirements for each tribal police officer. To be authorized as a general authority Washington peace officer, a tribal police officer must successfully complete the requirements set forth under RCW 43.101.157. Any applicant not meeting the requirements for certification as a tribal police officer may not act as a general authority Washington peace officer under this chapter. The criminal justice training commission shall notify the department of enterprise services if:

(i) A tribal police officer authorized under this chapter as a general authority Washington state peace officer has been decertified pursuant to RCW 43.101.157; or

(ii) An appropriate sovereign tribal government is otherwise in noncompliance with RCW 43.101.157.

(3) A copy of any citation or notice of infraction issued, or any incident report taken, by a tribal police officer acting in the capacity of a general authority Washington peace officer as authorized by this chapter must be submitted within three days to the police chief or sheriff within whose jurisdiction the action was taken. Any citation issued under this chapter shall be to a Washington court, except that any citation issued to Indians within the exterior boundaries of an Indian reservation may be cited to a tribal court. Any arrest made or citation issued not in compliance with this chapter is not enforceable.

(4) Any authorization granted under this chapter shall not in any way expand the jurisdiction of any tribal court or other tribal authority.

(5) The authority granted under this chapter shall be coextensive with the exterior boundaries of the reservation,

except that an officer commissioned under this section may act as authorized under RCW 10.93.070 beyond the exterior boundaries of the reservation.

(6) For purposes of civil liability under this chapter, a tribal police officer shall not be considered an employee of the state of Washington or any local government except where a state or local government has deputized a tribal police officer as a specially commissioned officer. Neither the state of Washington and its individual employees nor any local government and its individual employees shall be liable for the authorization of tribal police officers under this chapter, nor for the negligence or other misconduct of tribal officers. The authorization of tribal police officers under this chapter shall not be deemed to have been a nondelegable duty of the state of Washington or any local government.

(7) Nothing in this chapter impairs or affects the existing status and sovereignty of those sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington as established under the laws of the United States.

(8) Nothing in this chapter limits, impairs, or nullifies the authority of a county sheriff to appoint duly commissioned state or federally certified tribal police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the state of Washington.

(9) Nothing in this chapter limits, impairs, or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10.93.120, of a person suspected of violating state law, where the officer would otherwise not have jurisdiction.

(10) An interlocal agreement pursuant to chapter 39.34 RCW is required between the sovereign tribal government and all local government law enforcement agencies that will have shared jurisdiction under this chapter prior to authorization taking effect under this chapter. Nothing in this chapter shall limit, impair, or otherwise affect the implementation of an interlocal agreement completed pursuant to chapter 39.34 RCW by July 1, 2008, between a sovereign tribal government and a local government law enforcement agency for cooperative law enforcement.

(a) Sovereign tribal governments that meet all of the requirements of subsection (2) of this section, but do not have an interlocal agreement pursuant to chapter 39.34 RCW and seek authorization under this chapter, may submit proof of liability insurance and training certification to the department of enterprise services. Upon confirmation of receipt of the information from the department of enterprise services, the sovereign tribal government and the local government law enforcement agencies that will have shared jurisdiction under this chapter have one year to enter into an interlocal agreement pursuant to chapter 39.34 RCW. If the sovereign tribal government and the local government law enforcement agencies that will have shared jurisdiction under this chapter are not able to reach agreement after one year, the sovereign tribal governments and the local government law enforcement agencies shall submit to binding arbitration pursuant to chapter 7.04A RCW with the American arbitration association or successor agency for purposes of completing an agreement prior to authorization going into effect.

(b) For the purposes of (a) of this subsection, those sovereign tribal government and local government law enforcement agencies that must enter into binding arbitration shall submit to last best offer arbitration. For purposes of accepting a last best offer, the arbitrator must consider other interlocal agreements between sovereign tribal governments and local law enforcement agencies in Washington state, any model policy developed by the Washington association of sheriffs and police chiefs or successor agency, and national best practices. [2011 1st sp.s. c 43 § 519; 2008 c 224 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2008 c 224: See note following RCW 10.92.010.

Chapter 10.93 RCW

WASHINGTON MUTUAL AID PEACE OFFICERS POWERS ACT

Sections

10.93.001	Short title—Legislative intent—Construction.
10.93.020	Definitions.
10.93.030	Reporting use of authority under this chapter.
10.93.040	Liability for exercise of authority.
10.93.050	Supervisory control over peace officers.
10.93.060	Privileges and immunities applicable.
10.93.070	General authority peace officer—Powers of, circumstances.
10.93.080	Limited authority peace officer—No additional powers.
10.93.090	Specially commissioned peace officer—Powers of, circumstances.
10.93.100	Federal peace officers—No additional powers.
10.93.110	Attorney general—No additional powers.
10.93.120	Fresh pursuit, arrest.
10.93.130	Contracting authority of law enforcement agencies.
10.93.140	State patrol, fish and wildlife exempted.
10.93.900	Effective date—1985 c 89.

10.93.001 Short title—Legislative intent—Construction. (1) This chapter may be known and cited as the Washington mutual aid peace officer powers act of 1985.

(2) It is the intent of the legislature that current artificial barriers to mutual aid and cooperative enforcement of the laws among general authority local, state, and federal agencies be modified pursuant to this chapter.

(3) This chapter shall be liberally construed to effectuate the intent of the legislature to modify current restrictions upon the limited territorial and enforcement authority of general authority peace officers and to effectuate mutual aid among agencies.

(4) The modification of territorial and enforcement authority of the various categories of peace officers covered by this chapter shall not create a duty to act in extraterritorial situations beyond any duty which may otherwise be imposed by law or which may be imposed by the primary commissioning agency. [1985 c 89 § 1.]

10.93.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general,

as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(2) "Limited authority Washington law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, the office of the insurance commissioner, and the state department of corrections.

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(4) "Limited authority Washington peace officer" means any full-time, fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. A limited authority Washington peace officer may be a specially commissioned Washington peace officer if otherwise qualified for such status under this chapter.

(5) "Specially commissioned Washington peace officer", for the purposes of this chapter, means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon or Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho. A reserve peace officer is an individual who is an officer of a Washington law enforcement agency who does not serve such agency on a full-time basis but who, when called by the agency into active service, is fully commissioned on the same basis as full-time peace officers to enforce the criminal laws of the state.

(6) "Federal peace officer" means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(7) "Agency with primary territorial jurisdiction" means a city or town police agency which has responsibility for police activity within its boundaries; or a county police or sheriff's department which has responsibility with regard to police activity in the unincorporated areas within the county boundaries; or a statutorily authorized port district police agency or four-year state college or university police agency

which has responsibility for police activity within the statutorily authorized enforcement boundaries of the port district, state college, or university.

(8) "Primary commissioning agency" means (a) the employing agency in the case of a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer, and (b) the commissioning agency in the case of a specially commissioned Washington peace officer (i) who is performing functions within the course and scope of the special commission and (ii) who is not also a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer.

(9) "Primary function of an agency" means that function to which greater than fifty percent of the agency's resources are allocated.

(10) "Mutual law enforcement assistance" includes, but is not limited to, one or more law enforcement agencies aiding or assisting one or more other such agencies through loans or exchanges of personnel or of material resources, for law enforcement purposes. [2006 c 284 § 16; 2002 c 128 § 1; 1994 c 264 § 3; 1988 c 36 § 5; 1985 c 89 § 2.]

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

10.93.030 Reporting use of authority under this chapter. The circumstances surrounding any actual exercise of peace officer authority under this chapter shall be timely reported, after the fact, to the Washington law enforcement agency with primary territorial jurisdiction and shall be subject to any reasonable reporting procedure which may be established by such agency. [1985 c 89 § 3.]

10.93.040 Liability for exercise of authority. Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by an officer acting within the course and scope of the officer's duties as a peace officer under this chapter is the responsibility of the primary commissioning agency unless the officer acts under the direction and control of another agency or unless the liability is otherwise allocated under a written agreement between the primary commissioning agency and another agency. [1985 c 89 § 4.]

10.93.050 Supervisory control over peace officers. All persons exercising peace officer powers under this chapter are subject to supervisory control of and limitations imposed by the primary commissioning agency, but the primary commissioning agency may, by agreement with another agency, temporarily delegate supervision over the peace officer to another agency. [1985 c 89 § 5.]

10.93.060 Privileges and immunities applicable. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, all pension, relief, disability, worker's compensation insurance, and other benefits which apply to the activity of officers, agents, or employees of any law enforcement agency when performing their respective functions within the territorial limits of their respective agencies shall apply to them and to their primary

commissioning agencies to the same degree and extent while such persons are engaged in the performance of authorized functions and duties under this chapter. [1985 c 89 § 6.]

10.93.070 General authority peace officer—Powers of, circumstances. In addition to any other powers vested by law, a general authority Washington peace officer who possesses a certificate of basic law enforcement training or a certificate of equivalency or has been exempted from the requirement therefor by the Washington state criminal justice training commission may enforce the traffic or criminal laws of this state throughout the territorial bounds of this state, under the following enumerated circumstances:

(1) Upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;

(2) In response to an emergency involving an immediate threat to human life or property;

(3) In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction or in response to the request of a peace officer with enforcement authority;

(4) When the officer is transporting a prisoner;

(5) When the officer is executing an arrest warrant or search warrant; or

(6) When the officer is in fresh pursuit, as defined in RCW 10.93.120. [1985 c 89 § 7.]

10.93.080 Limited authority peace officer—No additional powers. A limited authority Washington peace officer shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 8.]

10.93.090 Specially commissioned peace officer—Powers of, circumstances. A specially commissioned Washington peace officer who has successfully completed a course of basic training prescribed or approved for such officers by the Washington state criminal justice training commission may exercise any authority which the special commission vests in the officer, throughout the territorial bounds of the state, outside of the officer's primary territorial jurisdiction under the following circumstances:

(1) The officer is in fresh pursuit, as defined in RCW 10.93.120; or

(2) The officer is acting pursuant to mutual law enforcement assistance agreement between the primary commissioning agency and the agency with primary territorial jurisdiction. [1985 c 89 § 9.]

10.93.100 Federal peace officers—No additional powers. Federal peace officers shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 10.]

10.93.110 Attorney general—No additional powers. The attorney general shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 11.]

10.93.120 Fresh pursuit, arrest. (1) Any peace officer who has authority under Washington law to make an arrest may proceed in fresh pursuit of a person (a) who is reasonably believed to have committed a violation of traffic or criminal laws, or (b) for whom such officer holds a warrant of arrest, and such peace officer shall have the authority to arrest and to hold such person in custody anywhere in the state.

(2) The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply immediate pursuit, but pursuit without unreasonable delay. [1985 c 89 § 12.]

10.93.130 Contracting authority of law enforcement agencies. Under the interlocal cooperation act, chapter 39.34 RCW, any law enforcement agency referred to by this chapter may contract with any other such agency and may also contract with any law enforcement agency of another state, or such state's political subdivision, to provide mutual law enforcement assistance. The agency with primary territorial jurisdiction may require that officers from participating agencies meet reasonable training or certification standards or other reasonable standards. [1985 c 89 § 13.]

10.93.140 State patrol, fish and wildlife exempted. This chapter does not limit the scope of jurisdiction and authority of the Washington state patrol and the department of fish and wildlife as otherwise provided by law, and these agencies shall not be bound by the reporting requirements of RCW 10.93.030. [2002 c 128 § 2; 1985 c 89 § 14.]

10.93.900 Effective date—1985 c 89. This act shall take effect July 1, 1985. [1985 c 89 § 17.]

**Chapter 10.95 RCW
CAPITAL PUNISHMENT—
AGGRAVATED FIRST DEGREE MURDER**

Sections

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Homicide: Chapter 9A.32 RCW.

10.95.010 Court rules. No rule promulgated by the supreme court of Washington pursuant to RCW 2.04.190 and 2.04.200, now or in the future, shall be construed to supersede or alter any of the provisions of this chapter. [1981 c 138 § 1.]

10.95.020 Definition. A person is guilty of aggravated first degree murder, a class A felony, if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

- (a) Robbery in the first or second degree;
- (b) Rape in the first or second degree;
- (c) Burglary in the first or second degree or residential burglary;
- (d) Kidnapping in the first degree; or
- (e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in *RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

- (a) Harassment as defined in RCW 9A.46.020; or
- (b) Any criminal assault. [2003 c 53 § 96; 1998 c 305 § 1. Prior: 1995 c 129 § 17 (Initiative Measure No. 159); 1994 c 121 § 3; 1981 c 138 § 2.]

*Reviser's note: RCW 10.99.020 was amended by 2004 c 18 § 2, changing subsection (1) to subsection (3).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

10.95.030 Sentences for aggravated first degree murder. (1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person had an intellectual disability at the time the crime was committed, under the definition of intellectual disability set forth in (a) of this subsection. A diagnosis of intellectual disability shall be documented by a

licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of intellectual disabilities. The defense must establish an intellectual disability by a preponderance of the evidence and the court must make a finding as to the existence of an intellectual disability.

(a) "Intellectual disability" means the individual has: (i) Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.

(b) "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(c) "Significantly subaverage general intellectual functioning" means intelligence quotient seventy or below.

(d) "Adaptive behavior" means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age.

(e) "Developmental period" means the period of time between conception and the eighteenth birthday. [2010 c 94 § 3; 1993 c 479 § 1; 1981 c 138 § 3.]

Purpose—2010 c 94: See note following RCW 44.04.280.

10.95.040 Special sentencing proceeding—Notice—Filing—Service. (1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency.

(2) The notice of special sentencing proceeding shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing proceeding, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

(3) If a notice of special sentencing proceeding is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty. [1981 c 138 § 4.]

10.95.050 Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges. (1) If a defendant is adjudicated guilty of aggravated first degree murder, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing proceeding shall be held if a notice of special sentencing proceeding was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing proceeding be held.

(2) A jury shall decide the matters presented in the special sentencing proceeding unless a jury is waived in the discretion of the court and with the consent of the defendant and the prosecuting attorney.

(3) If the defendant's guilt was determined by a jury verdict, the trial court shall reconvene the same jury to hear the special sentencing proceeding. The proceeding shall commence as soon as practicable after completion of the trial at which the defendant's guilt was determined. If, however, unforeseen circumstances make it impracticable to reconvene the same jury to hear the special sentencing proceeding, the trial court may dismiss that jury and convene a jury pursuant to subsection (4) of this section.

(4) If the defendant's guilt was determined by plea of guilty or by decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including but not limited to a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve persons plus whatever alternate jurors the trial court deems necessary. The defense and prosecution shall each be allowed to peremptorily challenge twelve jurors. If there is more than one defendant, each defendant shall be allowed an additional peremptory challenge and the prosecution shall be allowed a like number of additional challenges. If alternate jurors are selected, the defense and prosecution shall each be allowed one peremptory challenge for each alternate juror to be selected and if there is more than one defendant each defendant shall be allowed an additional peremptory challenge for each alternate juror to be selected and the prosecution shall be allowed a like number of additional challenges. [1981 c 138 § 5.]

10.95.060 Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury. (1) At the commencement of the special sentencing proceeding, the trial court shall instruct the jury as to the nature and purpose of the proceeding and as to the consequences of its decision, as provided in RCW 10.95.030.

(2) At the special sentencing proceeding both the prosecution and defense shall be allowed to make an opening statement. The prosecution shall first present evidence and then the defense may present evidence. Rebuttal evidence may be presented by each side. Upon conclusion of the evidence, the court shall instruct the jury and then the prosecution and defense shall be permitted to present argument. The prosecution shall open and conclude the argument.

(3) The court shall admit any relevant evidence which it deems to have probative value regardless of its admissibility under the rules of evidence, including hearsay evidence and evidence of the defendant's previous criminal activity regardless of whether the defendant has been charged or convicted as a result of such activity. The defendant shall be accorded a fair opportunity to rebut or offer any hearsay evidence.

In addition to evidence of whether or not there are sufficient mitigating circumstances to merit leniency, if the jury sitting in the special sentencing proceeding has not heard evidence of the aggravated first degree murder of which the defendant stands convicted, both the defense and prosecution

may introduce evidence concerning the facts and circumstances of the murder.

(4) Upon conclusion of the evidence and argument at the special sentencing proceeding, the jury shall retire to deliberate upon the following question: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

In order to return an affirmative answer to the question posed by this subsection, the jury must so find unanimously. [1981 c 138 § 6.]

10.95.070 Special sentencing proceeding—Factors which jury may consider in deciding whether leniency merited. In deciding the question posed by RCW 10.95.060(4), the jury, or the court if a jury is waived, may consider any relevant factors, including but not limited to the following:

(1) Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(2) Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;

(3) Whether the victim consented to the act of murder;

(4) Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(5) Whether the defendant acted under duress or domination of another person;

(6) Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect. However, a person found to have an intellectual disability under RCW 10.95.030(2) may in no case be sentenced to death;

(7) Whether the age of the defendant at the time of the crime calls for leniency; and

(8) Whether there is a likelihood that the defendant will pose a danger to others in the future. [2010 c 94 § 4; 1993 c 479 § 2; 1981 c 138 § 7.]

Purpose—2010 c 94: See note following RCW 44.04.280.

10.95.080 When sentence to death or sentence to life imprisonment shall be imposed. (1) If a jury answers affirmatively the question posed by RCW 10.95.060(4), or when a jury is waived as allowed by RCW 10.95.050(2) and the trial court answers affirmatively the question posed by RCW 10.95.060(4), the defendant shall be sentenced to death. The trial court may not suspend or defer the execution or imposition of the sentence.

(2) If the jury does not return an affirmative answer to the question posed in RCW 10.95.060(4), the defendant shall be sentenced to life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 8.]

10.95.090 Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid. If any sentence of death imposed pursuant to this chapter is commuted by the governor, or held to be invalid by a final judgment of a court after all avenues of appeal have

been exhausted by the parties to the action, or if the death penalty established by this chapter is held to be invalid by a final judgment of a court which is binding on all courts in the state, the sentence for aggravated first degree murder if there was an affirmative response to the question posed by RCW 10.95.060(4) shall be life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 9.]

10.95.100 Mandatory review of death sentence by supreme court—Notice—Transmittal—Contents of notice—Jurisdiction. Whenever a defendant is sentenced to death, upon entry of the judgment and sentence in the trial court the sentence shall be reviewed on the record by the supreme court of Washington.

Within ten days of the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall transmit notice thereof to the clerk of the supreme court of Washington and to the parties. The notice shall include the caption of the case, its cause number, the defendant's name, the crime or crimes of which the defendant was convicted, the sentence imposed, the date of entry of judgment and sentence, and the names and addresses of the attorneys for the parties. The notice shall vest with the supreme court of Washington the jurisdiction to review the sentence of death as provided by this chapter. The failure of the clerk of the trial court to transmit the notice as required shall not prevent the supreme court of Washington from conducting the sentence review as provided by chapter 138, Laws of 1981. [1981 c 138 § 10.]

10.95.110 Verbatim report of trial proceedings—Preparation—Transmittal to supreme court—Clerk's papers—Receipt. (1) Within ten days after the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall cause the preparation of a verbatim report of the trial proceedings to be commenced.

(2) Within five days of the filing and approval of the verbatim report of proceedings, the clerk of the trial court shall transmit such verbatim report of proceedings together with copies of all of the clerk's papers to the clerk of the supreme court of Washington. The clerk of the supreme court of Washington shall forthwith acknowledge receipt of these documents by providing notice of receipt to the clerk of the trial court, the defendant or his or her attorney, and the prosecuting attorney. [1981 c 138 § 11.]

10.95.120 Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney. In all cases in which a person is convicted of aggravated first degree murder, the trial court shall, within thirty days after the entry of the judgment and sentence, submit a report to the clerk of the supreme court of Washington, to the defendant or his or her attorney, and to the prosecuting attorney which provides the information specified under subsections (1) through (8) of this section. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Washington and shall include the following:

(1) Information about the defendant, including the following:

- (a) Name, date of birth, gender, marital status, and race and/or ethnic origin;
 - (b) Number and ages of children;
 - (c) Whether his or her parents are living, and date of death where applicable;
 - (d) Number of children born to his or her parents;
 - (e) The defendant's educational background, intelligence level, and intelligence quotient;
 - (f) Whether a psychiatric evaluation was performed, and if so, whether it indicated that the defendant was:
 - (i) Able to distinguish right from wrong;
 - (ii) Able to perceive the nature and quality of his or her act; and
 - (iii) Able to cooperate intelligently with his or her defense;
 - (g) Any character or behavior disorders found or other pertinent psychiatric or psychological information;
 - (h) The work record of the defendant;
 - (i) A list of the defendant's prior convictions including the offense, date, and sentence imposed; and
 - (j) The length of time the defendant has resided in Washington and the county in which he or she was convicted.
- (2) Information about the trial, including:
- (a) The defendant's plea;
 - (b) Whether defendant was represented by counsel;
 - (c) Whether there was evidence introduced or instructions given as to defenses to aggravated first degree murder, including excusable homicide, justifiable homicide, insanity, duress, entrapment, alibi, intoxication, or other specific defense;
 - (d) Any other offenses charged against the defendant and tried at the same trial and whether they resulted in conviction;
 - (e) What aggravating circumstances were alleged against the defendant and which of these circumstances was found to have been applicable; and
 - (f) Names and charges filed against other defendant(s) if tried jointly and disposition of the charges.
- (3) Information concerning the special sentencing proceeding, including:
- (a) The date the defendant was convicted and date the special sentencing proceeding commenced;
 - (b) Whether the jury for the special sentencing proceeding was the same jury that returned the guilty verdict, providing an explanation if it was not;
 - (c) Whether there was evidence of mitigating circumstances;
 - (d) Whether there was, in the court's opinion, credible evidence of the mitigating circumstances as provided in RCW 10.95.070;
 - (e) The jury's answer to the question posed in RCW 10.95.060(4);
 - (f) The sentence imposed.
- (4) Information about the victim, including:
- (a) Whether he or she was related to the defendant by blood or marriage;
 - (b) The victim's occupation and whether he or she was an employer or employee of the defendant;
 - (c) Whether the victim was acquainted with the defendant, and if so, how well;
 - (d) The length of time the victim resided in Washington and the county;

(e) Whether the victim was the same race and/or ethnic origin as the defendant;

(f) Whether the victim was the same sex as the defendant;

(g) Whether the victim was held hostage during the crime and if so, how long;

(h) The nature and extent of any physical harm or torture inflicted upon the victim prior to death;

(i) The victim's age; and

(j) The type of weapon used in the crime, if any.

(5) Information about the representation of the defendant, including:

(a) Date counsel secured;

(b) Whether counsel was retained or appointed, including the reason for appointment;

(c) The length of time counsel has practiced law and nature of his or her practice; and

(d) Whether the same counsel served at both the trial and special sentencing proceeding, and if not, why not.

(6) General considerations, including:

(a) Whether the race and/or ethnic origin of the defendant, victim, or any witness was an apparent factor at trial;

(b) What percentage of the county population is the same race and/or ethnic origin of the defendant;

(c) Whether members of the defendant's or victim's race and/or ethnic origin were represented on the jury;

(d) Whether there was evidence that such members were systematically excluded from the jury;

(e) Whether the sexual orientation of the defendant, victim, or any witness was a factor in the trial;

(f) Whether any specific instruction was given to the jury to exclude race, ethnic origin, or sexual orientation as an issue;

(g) Whether there was extensive publicity concerning the case in the community;

(h) Whether the jury was instructed to disregard such publicity;

(i) Whether the jury was instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when considering its verdict or its findings in the special sentencing proceeding;

(j) The nature of the evidence resulting in such instruction; and

(k) General comments of the trial judge concerning the appropriateness of the sentence considering the crime, defendant, and other relevant factors.

(7) Information about the chronology of the case, including the date that:

(a) The defendant was arrested;

(b) Trial began;

(c) The verdict was returned;

(d) Post-trial motions were ruled on;

(e) Special sentencing proceeding began;

(f) Sentence was imposed;

(g) Trial judge's report was completed; and

(h) Trial judge's report was filed.

(8) The trial judge shall sign and date the questionnaire when it is completed. [1981 c 138 § 12.]

10.95.130 Questions posed for determination by supreme court in death sentence review—Review in addi-

(2012 Ed.)

tion to appeal—Consolidation of review and appeal. (1) The sentence review required by RCW 10.95.100 shall be in addition to any appeal. The sentence review and an appeal shall be consolidated for consideration. The defendant and the prosecuting attorney may submit briefs within the time prescribed by the court and present oral argument to the court.

(2) With regard to the sentence review required by chapter 138, Laws of 1981, the supreme court of Washington shall determine:

(a) Whether there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); and

(b) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. For the purposes of this subsection, "similar cases" means cases reported in the Washington Reports or Washington Appellate Reports since January 1, 1965, in which the judge or jury considered the imposition of capital punishment regardless of whether it was imposed or executed, and cases in which reports have been filed with the supreme court under RCW 10.95.120;

(c) Whether the sentence of death was brought about through passion or prejudice; and

(d) Whether the defendant had an intellectual disability within the meaning of RCW 10.95.030(2). [2010 c 94 § 5; 1993 c 479 § 3; 1981 c 138 § 13.]

Purpose—2010 c 94: See note following RCW 44.04.280.

10.95.140 Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution. Upon completion of a sentence review:

(1) The supreme court of Washington shall invalidate the sentence of death and remand the case to the trial court for resentencing in accordance with RCW 10.95.090 if:

(a) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(a); or

(b) The court makes an affirmative determination as to any of the questions posed by RCW 10.95.130(2) (b), (c), or (d).

(2) The court shall affirm the sentence of death and remand the case to the trial court for execution in accordance with RCW 10.95.160 if:

(a) The court makes an affirmative determination as to the question posed by RCW 10.95.130(2)(a); and

(b) The court makes a negative determination as to the questions posed by RCW 10.95.130(2) (b), (c), and (d). [1993 c 479 § 4; 1981 c 138 § 14.]

10.95.150 Time limit for appellate review of death sentence and filing opinion. In all cases in which a sentence of death has been imposed, the appellate review, if any, and sentence review to or by the supreme court of Washington shall be decided and an opinion on the merits shall be filed within one year of receipt by the clerk of the supreme court of Washington of the verbatim report of proceedings and clerk's papers filed under RCW 10.95.110. If this time requirement is not met, the chief justice of the supreme court of Washington shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting such circumstances. A failure to comply with the time

requirements of this subsection shall in no way preclude the ultimate execution of a sentence of death. [1988 c 202 § 17; 1981 c 138 § 15.]

Additional notes found at www.leg.wa.gov

10.95.160 Death warrant—Issuance—Form—Time for execution of judgment and sentence. (1) If a death sentence is affirmed and the case remanded to the trial court as provided in RCW 10.95.140(2), a death warrant shall forthwith be issued by the clerk of the trial court, which shall be signed by a judge of the trial court and attested by the clerk thereof under the seal of the court. The warrant shall be directed to the superintendent of the state penitentiary and shall state the conviction of the person named therein and the judgment and sentence of the court, and shall appoint a day on which the judgment and sentence of the court shall be executed by the superintendent, which day shall not be less than thirty nor more than ninety days from the date the trial court receives the remand from the supreme court of Washington.

(2) If the date set for execution under subsection (1) of this section is stayed by a court of competent jurisdiction for any reason, the new execution date is automatically set at thirty judicial days after the entry of an order of termination or vacation of the stay by such court unless the court invalidates the conviction, sentence, or remands for further judicial proceedings. The presence of the inmate under sentence of death shall not be required for the court to vacate or terminate the stay according to this section. [1990 c 263 § 1; 1981 c 138 § 16.]

10.95.170 Imprisonment of defendant. The defendant shall be imprisoned in the state penitentiary within ten days after the trial court enters a judgment and sentence imposing the death penalty and shall be imprisoned both prior to and subsequent to the issuance of the death warrant as provided in RCW 10.95.160. During such period of imprisonment, the defendant shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under sentence of death shall be assigned to single-person cells. [1983 c 255 § 1; 1981 c 138 § 17.]

Convicted female persons, commitment and procedure as to death sentences: RCW 72.02.250.

Additional notes found at www.leg.wa.gov

10.95.180 Death penalty—How executed. (1) The punishment of death shall be supervised by the superintendent of the penitentiary and shall be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the defendant is dead, or, at the election of the defendant, by hanging by the neck until the defendant is dead. In any case, death shall be pronounced by a licensed physician.

(2) All executions, for both men and women, shall be carried out within the walls of the state penitentiary. [1996 c 251 § 1; 1986 c 194 § 1; 1981 c 138 § 18.]

Additional notes found at www.leg.wa.gov

10.95.185 Witnesses. (1) Not less than twenty days prior to a scheduled execution, judicial officers, law enforcement representatives, media representatives, representatives

of the families of the victims, and representatives from the family of the defendant who wish to attend and witness the execution, must submit an application to the superintendent. Such application must designate the relationship and reason for wishing to attend.

(2) Not less than fifteen days prior to the scheduled execution, the superintendent shall designate the total number of individuals who will be allowed to attend and witness the planned execution. The superintendent shall determine the number of witnesses that will be allowed in each of the following categories:

(a) No less than five media representatives with consideration to be given to news organizations serving communities affected by the crimes or by the commission of the execution of the defendant.

(b) Judicial officers.

(c) Representatives of the families of the victims.

(d) Representatives from the family of the defendant.

(e) Up to two law enforcement representatives. The chief executive officer of the agency that investigated the crime shall designate the law enforcement representatives.

After the list is composed, the superintendent shall serve this list on all parties who have submitted an application pursuant to this section. The superintendent shall develop and implement procedures to determine the persons within each of the categories listed in this subsection who will be allowed to attend and witness the execution.

(3) Not less than ten days prior to the scheduled execution, the superintendent shall file the witness list with the superior court from which the conviction and death warrant was issued with a petition asking that the court enter an order certifying this list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than five days after the filing of the petition.

(4) Unless a show cause petition is filed with the superior court from which the conviction and death warrant was issued within five days of the filing of the superintendent's petition, the superintendent's list, by order of the superior court, becomes final, and no other party has standing to challenge its appropriateness.

(5) In no case may the superintendent or the superior court order or allow more than seventeen individuals other than required staff to witness a planned execution.

(6) All witnesses must adhere to the search and security provisions of the department of corrections' policy regarding the witnessing of an execution.

(7) The superior court from which the conviction and death warrant was issued is the exclusive court for seeking judicial process for the privilege of attending and witnessing an execution.

(8) For purposes of this section:

(a) "Judicial officer" means: (i) The superior court judge who signed the death warrant issued pursuant to RCW 10.95.160 for the execution of the individual, (ii) the current prosecuting attorney or a deputy prosecuting attorney of the county from which the final judgment and sentence and death warrant were issued, and (iii) the most recent attorney of record representing the individual sentenced to death.

(b) "Law enforcement representatives" means those law enforcement officers responsible for investigating the crime for which the defendant was sentenced to death.

(c) "Media representatives" means representatives from news organizations of all forms of media serving the state.

(d) "Representatives of the families of the victims" means representatives from the immediate families of the victim(s) of the individual sentenced to death, including victim advocates of the immediate family members. Victim advocates shall include any person working or volunteering for a recognized victim advocacy group or a prosecutor-based or law enforcement-based agency on behalf of victims or witnesses.

(e) "Representative from the family of the defendant" means a representative from the immediate family of the individual sentenced to death.

(f) "Superintendent" means the superintendent of the Washington state penitentiary. [1999 c 332 § 1; 1993 c 463 § 2.]

Additional notes found at www.leg.wa.gov

10.95.190 Death warrant—Record—Return to trial court. (1) The superintendent of the state penitentiary shall keep in his or her office as part of the public records a book in which shall be kept a copy of each death warrant together with a complete statement of the superintendent's acts pursuant to such warrants.

(2) Within twenty days after each execution of a sentence of death, the superintendent of the state penitentiary shall return the death warrant to the clerk of the trial court from which it was issued with the superintendent's return thereon showing all acts and proceedings done by him or her thereunder. [1981 c 138 § 19.]

10.95.200 Proceedings for failure to execute on day named. Whenever the day appointed for the execution of a defendant shall have passed, from any cause, other than the issuance of a stay by a court of competent jurisdiction, without the execution of such defendant having occurred, the trial court which issued the original death warrant shall issue a new death warrant in accordance with RCW 10.95.160. The defendant's presence before the court is not required. However, nothing in this section shall be construed as restricting the defendant's right to be represented by counsel in connection with issuance of a new death warrant. [1990 c 263 § 2; 1987 c 286 § 1; 1981 c 138 § 20.]

10.95.900 Severability—1981 c 138. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 138 § 22.]

10.95.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply

equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 28.]

Chapter 10.96 RCW CRIMINAL PROCESS RECORDS

Sections

10.96.005	Findings.
10.96.010	Definitions.
10.96.020	Production of records.
10.96.030	Authenticity of records—Verification—Affidavit, declaration, or certification.
10.96.040	Service of process issued by or in another state.
10.96.050	Recipients' immunity from liability.
10.96.060	Issuance of criminal process.

10.96.005 Findings. The legislature finds that many businesses, associations, and organizations providing goods and services to the public, conducting other activity in Washington, or otherwise affecting residents of Washington now operate nationally or globally and often maintain their business records in a location outside the state of Washington. The legislature further finds that bringing persons or organizations committing crimes in Washington to justice is a matter of great public interest because crimes have a significant effect on businesses, associations, and other organizations that conduct business in Washington, as well as on Washington citizens. Crimes result in significant harm and losses to persons, businesses, associations, and other organizations victimized, as well as persons not directly victimized when businesses or others more directly affected by the crimes must raise prices to cover crime losses. The ability of law enforcement and the criminal justice system to effectively perform their duties to the public often depends upon law enforcement agencies, prosecutors, and criminal defense attorneys being able to obtain and use records relevant to crimes that affect Washington's citizens, businesses, associations, organizations, and others who provide goods or services, or conduct other activity in Washington. In the course of fulfilling their duties to the public, law enforcement agencies, prosecutors, and criminal defense attorneys must frequently obtain records from these entities, and be able to use the records in court. The ability to obtain and use these records has an impact on Washington citizens because it affects the ability to enforce Washington's criminal laws and affects the deterrence value arising from criminal prosecution. Effectively combating crime requires laws facilitating and requiring that all those who possess records relevant to a criminal investigation comply with the legal process issued in connection with criminal investigations or litigation. [2008 c 21 § 1.]

10.96.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse result" includes one or more of the following possible consequences:

- (a) Danger to the life or physical safety of an individual;
 - (b) A flight from prosecution;
 - (c) The destruction of, potential loss of, or tampering with evidence;
 - (d) The intimidation of potential witnesses;
 - (e) Jeopardy to an investigation or undue delay of a trial.
- (2) "Applicant" means a law enforcement officer, prosecuting attorney, deputy or special deputy prosecuting attorney, or defense attorney who is seeking criminal process under RCW 10.96.020.

(3) "Criminal process" means a search warrant or legal process issued pursuant to RCW 10.79.015 and CrR 2.3; any process issued pursuant to chapter 9.73, 9A.82, 10.27, or 10.29 RCW; and any other legal process signed by a judge of the superior court and issued in a criminal matter which allows the search for or commands production of records that are in the actual or constructive possession of the recipient, regardless of whether the recipient or the records are physically located within the state.

(4) "Defense attorney" means an attorney of record for a person charged with a crime when the attorney is seeking the issuance of criminal process for the defense of the criminal case.

(5) "Properly served" means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to the recipient addressee of criminal process.

(6) "Recipient" means a person, as defined in RCW 9A.04.110, or a business, as defined in RCW 5.45.010, that has conducted business or engaged in transactions occurring at least in part in this state upon whom criminal process issued under this chapter is properly served. [2008 c 21 § 2.]

10.96.020 Production of records. This section shall apply to any criminal process allowing for search of or commanding production of records that are in the actual or constructive possession of a recipient who receives service outside Washington, regardless of whether the recipient or the records are physically located within the state.

(1) When properly served with criminal process issued under this section, the recipient shall provide the applicant all records sought pursuant to the criminal process. The records shall be produced within twenty business days of receipt of the criminal process, unless the process requires earlier production. An applicant may consent to a recipient's request for additional time to comply with the criminal process.

(2) Criminal process issued under this section must contain the following language in bold type on the first page of the document: "This [warrant, subpoena, order] is issued pursuant to RCW [insert citation to this statute]. A response is due within twenty business days of receipt, unless a shorter time is stated herein, or the applicant consents to a recipient's request for additional time to comply."

(3) If the judge finds reason to suspect that failure to produce records within twenty business days would cause an adverse result, the criminal process may require production of records within less than twenty business days. A court may reasonably extend the time required for production of the records upon finding that the recipient has shown good cause for that extension and that an extension of time would not cause an adverse result.

(4) When properly served with criminal process issued under this section, a recipient who seeks to quash the criminal process must seek relief from the court where the criminal process was issued, within the time originally required for production of records. The court shall hear and decide the motion no later than five court days after the motion is filed. An applicant's consent, under subsection (1) of this section, to a recipient's request for additional time to comply with the criminal process does not extend the date by which a recipient must seek the relief designated in this section. [2008 c 21 § 3.]

10.96.030 Authenticity of records—Verification—Affidavit, declaration, or certification. (1) Upon written request from the applicant, or if ordered by the court, the recipient of criminal process shall verify the authenticity of records that it produces by providing an affidavit, declaration, or certification that complies with subsection (2) of this section. The requirements of RCW 5.45.020 regarding business records as evidence may be satisfied by an affidavit, declaration, or certification that complies with subsection (2) of this section, without the need for testimony from the custodian of records, regardless of whether the business records were produced by a foreign or Washington state entity.

(2) To be admissible without testimony from the custodian of records, business records must be accompanied by an affidavit, declaration, or certification by its record custodian or other qualified person that includes contact information for the witness completing the document and attests to the following:

(a) The witness is the custodian of the record or sets forth evidence that the witness is qualified to testify about the record;

(b) The record was made at or near the time of the act, condition, or event set forth in the record by, or from information transmitted by, a person with knowledge of those matters;

(c) The record was made in the regular course of business;

(d) The identity of the record and the mode of its preparation; and

(e) Either that the record is the original or that it is a duplicate that accurately reproduces the original.

(3) A party intending to offer a record into evidence under this section must provide written notice of that intention to all adverse parties, and must make the record and affidavit, declaration, or certification available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them. A motion opposing admission in evidence of the record shall be made and determined by the court before trial and with sufficient time to allow the party offering the record time, if the motion is granted, to produce the custodian of the record or other qualified person at trial, without creating hardship on the party or on the custodian or other qualified person.

(4) Failure by a party to timely file a motion under subsection (4) of this section shall constitute a waiver of objection to admission of the evidence, but the court for good cause shown may grant relief from the waiver. When the court grants relief from the waiver, and thereafter determines the custodian of the record shall appear, a continuance of the

trial may be granted to provide the proponent of the record sufficient time to arrange for the necessary witness to appear.

(5) Nothing in this section precludes either party from calling the custodian of record of the record or other witness to testify regarding the record. [2008 c 21 § 4.]

10.96.040 Service of process issued by or in another state. A Washington recipient, when served with process that was issued by or in another state that on its face purports to be valid criminal process shall comply with that process as if that process had been issued by a Washington court. [2008 c 21 § 5.]

10.96.050 Recipients' immunity from liability. A recipient of criminal process or process under RCW 10.96.010 and 10.96.040, and any other person that responds to such process is immune from civil and criminal liability for complying with the process, and for any failure to provide notice of any disclosure to the person who is the subject of or identified in the disclosure. [2008 c 21 § 6.]

10.96.060 Issuance of criminal process. A judge of the superior court may issue any criminal process to any recipient at any address, within or without the state, for any matter over which the court has criminal jurisdiction pursuant to RCW 9A.04.030. This section does not limit a court's authority to issue warrants or legal process under other provisions of state law. [2008 c 21 § 7.]

Chapter 10.97 RCW WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

Sections

10.97.010	Declaration of policy.
10.97.020	Short title.
10.97.030	Definitions.
10.97.040	Information required—Exceptions.
10.97.045	Disposition data to initiating agency and state patrol.
10.97.050	Restricted, unrestricted information—Records.
10.97.060	Deletion of certain information, conditions.
10.97.070	Disclosure of suspect's identity to victim.
10.97.080	Inspection of information by subject—Challenges and corrections.
10.97.090	Administration by state patrol.
10.97.100	Fees.
10.97.110	Civil remedies—Criminal prosecution not affected.
10.97.120	Criminal penalties—Civil action not affected.
10.97.130	Child victims of sexual assaults, identification confidential.
10.97.140	Construction.

Public records: Chapter 42.56 RCW.

Records of community sexual assault program and underserved populations provider not available as part of discovery: RCW 70.125.065.

10.97.010 Declaration of policy. The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter. [1977 ex.s. c 314 § 1.]

10.97.020 Short title. This chapter may be cited as the Washington State Criminal Records Privacy Act. [1977 ex.s. c 314 § 2.]

(2012 Ed.)

Reviser's note: The phrase "This 1977 amendatory act" has been changed to "This chapter." This 1977 amendatory act [1977 ex.s. c 314] consists of chapter 10.97 RCW and the amendments of RCW 42.17.310, 43.43.705, 43.43.710, 43.43.730, and 43.43.810.

10.97.030 Definitions. For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330;

(g) Announcements of executive clemency;

(h) Intelligence, analytical, or investigative reports and files.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges other than: (a) A decision not to prosecute; (b) a dismissal; or (c) acquittal; with the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal due to a finding of not guilty by reason of insanity and a dismissal by reason of incompetency, pursuant to chapter 10.77 RCW; and a dis-

missal entered after a period of probation, suspension, or deferral of sentence.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single recordkeeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a recordkeeping agency for the purpose of maintaining the record is not a dissemination. [2012 c 125 § 1; 1999 c 49 § 1; 1998 c 297 § 49; 1990 c 3 § 128; 1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.97.040 Information required—Exceptions. No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: PROVIDED, HOWEVER, That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: PROVIDED FURTHER, That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the

disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW 10.97.045.

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary received from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination;

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or

(6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW 10.97.080 as now or hereafter amended. [1979 ex.s. c 36 § 2; 1977 ex.s. c 314 § 4.]

10.97.045 Disposition data to initiating agency and state patrol. Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW 43.43.745. [1979 ex.s. c 36 § 6.]

10.97.050 Restricted, unrestricted information—Records. (1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident that occurred within the last twelve months for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose

associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

- (a) An indication of to whom (agency or person) criminal history record information was disseminated;
- (b) The date on which the information was disseminated;
- (c) The individual to whom the information relates; and
- (d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concern-

ing sex offenders as provided in RCW 4.24.550. [2012 c 125 § 2; 2005 c 421 § 9; 1990 c 3 § 129; 1977 ex.s. c 314 § 5.]

Additional notes found at www.leg.wa.gov

10.97.060 Deletion of certain information, conditions. Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data shall be deleted upon the request of the person who is the subject of the record: PROVIDED, HOWEVER, That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

- (1) The disposition was a deferred prosecution or similar diversion of the alleged offender;
- (2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;
- (3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event. [1977 ex.s. c 314 § 6.]

10.97.070 Disclosure of suspect's identity to victim.

(1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) Unless the agency determines release would interfere with an ongoing criminal investigation, in any action brought pursuant to this chapter, criminal justice agencies shall disclose identifying information, including photographs of suspects, if the acts are alleged by the plaintiff or victim to be a violation of RCW 9A.50.020.

(3) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process. [1993 c 128 § 10; 1977 ex.s. c 314 § 7.]

Additional notes found at www.leg.wa.gov

10.97.080 Inspection of information by subject—Challenges and corrections. All criminal justice agencies shall permit an individual who is, or who believes that he or she may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the person who is the subject of the record. Such person may retain a copy of their personal nonconviction data information on file, if the criminal justice agency has verified the identities of those who seek to inspect them. Criminal justice agencies may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them. The criminal justice agency may charge a reasonable fee for fingerprinting or providing a copy of the personal nonconviction data information pursuant to this section. The provisions of chapter 42.56 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information. [2012 c 125 § 3; 2010 c 8 § 1093; 2005 c 274 § 206; 1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

10.97.090 Administration by state patrol. The Washington state patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act. The Washington state patrol may adopt any rules and regulations neces-

sary for the performance of the administrative functions provided for in this chapter.

The Washington state patrol shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems. [1979 ex.s. c 36 § 4; 1977 ex.s. c 314 § 9.]

10.97.100 Fees. Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies. [1977 ex.s. c 314 § 10.]

10.97.110 Civil remedies—Criminal prosecution not affected. Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him or her if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter. [2010 c 8 § 1094; 1979 ex.s. c 36 § 5; 1977 ex.s. c 314 § 11.]

10.97.120 Criminal penalties—Civil action not affected. Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or herself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law. [2010 c 8 § 1095; 1977 ex.s. c 314 § 12.]

10.97.130 Child victims of sexual assaults, identification confidential. Information identifying child victims under age eighteen who are victims of sexual assaults is con-

fidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying the child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. Prior to release of any criminal history record information, the releasing agency shall delete any information identifying a child victim of sexual assault from the information except as provided in this section. [1992 c 188 § 8.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

10.97.140 Construction. Nothing in RCW 40.14.060 or 40.14.070 or chapter 42.56 RCW precludes dissemination of criminal history record information, including nonconviction data, for the purposes of this chapter. [2005 c 274 § 207; 1999 c 326 § 4.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Chapter 10.98 RCW

CRIMINAL JUSTICE INFORMATION ACT

Sections

10.98.010	Purpose.
10.98.020	Short title.
10.98.030	Source of conviction histories.
10.98.040	Definitions.
10.98.050	Officials' duties.
10.98.060	Arrest and fingerprint form.
10.98.070	National crime information center interstate identification index.
10.98.080	State identification number, furnishing of.
10.98.090	Disposition forms—Coding.
10.98.100	Compliance audit.
10.98.110	Tracking felony cases.
10.98.130	Local jail reports.
10.98.140	Criminal justice forecasting—Sentencing records.
10.98.150	Status reports on felons.
10.98.160	Procedures, development considerations—Washington integrated justice information board, review and recommendations.

10.98.010 Purpose. The purpose of this chapter is to provide a system of reporting and disseminating felony criminal justice information that provides: (1) Timely and accurate criminal histories for filing and sentencing under the sentencing reform act of 1981, (2) identification and tracking of felons, and (3) data for statewide planning and forecasting of the felon population. [1984 c 17 § 1.]

10.98.020 Short title. This chapter may be known and cited as the criminal justice information act. [1984 c 17 § 2.]

10.98.030 Source of conviction histories. The Washington state patrol identification, child abuse, and criminal history section as established in *RCW 43.43.700 shall be the primary source of felony conviction histories for filings, plea agreements, and sentencing on felony cases. [1999 c 143 § 50; 1984 c 17 § 3.]

(2012 Ed.)

***Reviser's note:** RCW 43.43.700 was amended by 2006 c 294 § 1, renaming the "identification, child abuse, and criminal history section" as the "identification and criminal history section."

10.98.040 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Arrest and fingerprint form" means the reporting form prescribed by the *identification, child abuse, and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

(3) "Department" means the department of corrections.

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty—case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the *identification, child abuse, and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition report shall include but not be limited to the following types of information:

- The type of disposition;
- The statutory citation for the arrests;
- The sentence structure if the defendant was convicted of a felony;
- The state identification number; and
- Identification information and other information that is prescribed by the *identification, child abuse, and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol *identification, child abuse, and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol *section on identification, child abuse, and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community restitution. [2002 c 175 § 18; 1999 c 143 § 51; 1985 c 201 § 1; 1984 c 17 § 4.]

***Reviser's note:** The "identification, child abuse, and criminal history section" was renamed the "identification and criminal history section" by 2006 c 294 § 1.

Effective date—2002 c 175: See note following RCW 7.80.130.

10.98.050 Officials' duties. (1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identify-

ing data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney, county clerk, or appropriate court of limited jurisdiction, whichever is responsible for transmitting the report to the section under RCW 10.98.010.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections, or, in the case of a juvenile, the juvenile court administrator to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney. [1999 c 49 § 2; 1989 c 6 § 1; 1987 c 450 § 6; 1985 c 201 § 2; 1984 c 17 § 5.]

10.98.060 Arrest and fingerprint form. The arrest and fingerprint form shall include but not be limited to the following:

(1) Unique numbers associated with the arrest charges. The unique numbering system may be controlled by the local law enforcement agency, however the section shall approve of the numbering system and maintain a current catalog of approved local numbering systems. The purpose of the unique numbering system is to allow tracking of arrest charges through disposition;

(2) An organization code;

(3) Date of arrest;

(4) Local identification number;

(5) The prescribed fingerprints;

(6) Individual identification information and other information prescribed by the section. [1984 c 17 § 6.]

10.98.070 National crime information center interstate identification index. The section shall be the sole recipient of arrest and fingerprint forms described in RCW 10.98.060, fingerprint forms described in RCW 43.43.760, and disposition reports for forwarding to the federal bureau of investigation as required for participation in the national crime information center interstate identification index. The section shall comply with national crime information center interstate identification index regulations to maintain availability of out-of-state criminal history information. [1984 c 17 § 7.]

10.98.080 State identification number, furnishing of. The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony-like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the administrative office of the courts. [2005 c 282 § 23; 1985 c 201 § 3; 1984 c 17 § 8.]

10.98.090 Disposition forms—Coding. (1) In all cases where an arrest and fingerprint form is transmitted to the section, the originating agency shall code the form indicating which agency is initially responsible for reporting the dispo-

sition to the section. Coding shall include but not be limited to the prosecuting attorney, superior court, district court, municipal court, or the originating agency.

(2) In the case of a superior court or felony disposition, the county clerk or prosecuting attorney shall promptly transmit the completed disposition information to the section. In a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the county clerk shall electronically provide the disposition information. In the case of a felony conviction in a county without the judicial information system or other secure method of electronic transfer of information between the court and the section, the prosecuting attorney shall attach a copy of the judgment and sentence form to the disposition form transmitted to the section. In the case of a lower court disposition, the district or municipal court administrator shall either promptly transmit the completed disposition form or, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, electronically provide the disposition information to the section. For all other dispositions the originating agency shall promptly transmit the completed disposition form to the section. [1998 c 197 § 1; 1985 c 201 § 4; 1984 c 17 § 9.]

10.98.100 Compliance audit. The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information described in *RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record information for which no disposition report has been received and which has been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty-five days, the prosecuting attorney, district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross-checking outstanding cases with the administrative office of the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [2005 c 282 § 24; 1985 c 201 § 5; 1984 c 17 § 10.]

***Reviser's note:** RCW 43.43.705 was amended by 2006 c 294 § 2, changing the definition of "criminal offender record information" to "criminal history record information."

10.98.110 Tracking felony cases. (1) The department shall maintain records to track felony cases for convicted felons sentenced either to a term of confinement exceeding one

year or ordered under the supervision of the department and felony cases under the jurisdiction of the department pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a judgment and sentence form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from the time of sentencing through discharge.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol *identification, child abuse, and criminal history section, the office of financial management, and any other public or private agency that provides services to help individuals complete their felony sentences. [1999 c 143 § 52; 1993 c 31 § 1; 1987 c 462 § 2; 1984 c 17 § 11.]

***Reviser's note:** The "identification, child abuse, and criminal history section" was renamed the "identification and criminal history section" by 2006 c 294 § 1.

Additional notes found at www.leg.wa.gov

10.98.130 Local jail reports. Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for noncompliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release.

The office of financial management may contract with a state or local governmental agency, or combination thereof, or a private organization for the information collection and transmittal under this section. [1988 c 152 § 1; 1987 c 462 § 3; 1984 c 17 § 13.]

Additional notes found at www.leg.wa.gov

10.98.140 Criminal justice forecasting—Sentencing records. (1) The section, the department, and the office of financial management shall be the primary sources of information for criminal justice forecasting. The information maintained by these agencies shall be complete, accurate, and sufficiently timely to support state criminal justice forecasting.

(2) The caseload forecast council shall keep records on all sentencings above or below the standard range defined by chapter 9.94A RCW. As a minimum, the records shall include the name of the offender, the crimes for which the offender was sentenced, the name and county of the sentencing judge, and the deviation from the standard range. Such records shall be made available to public officials upon request. [2011 1st sp.s. c 40 § 32; 1987 c 462 § 4; 1985 c 201 § 6; 1984 c 17 § 14.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

10.98.150 Status reports on felons. The section and the department shall provide prompt responses to the requests

(2012 Ed.)

of law enforcement agencies and jails regarding the status of suspected or convicted felons. Dissemination of individual identities, criminal histories, or the whereabouts of a suspected or convicted felon shall be in accordance with chapter 10.97 RCW, the Washington state criminal records privacy act. [1984 c 17 § 15.]

10.98.160 Procedures, development considerations—Washington integrated justice information board, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrative office of the courts, local law enforcement agencies, local jails, the indeterminate sentence review board, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. The Washington integrated justice information board shall review and provide recommendations to state justice agencies and the courts for development and modification of the statewide justice information network. [2011 1st sp.s. c 40 § 33; 2005 c 282 § 25; 2003 c 104 § 2; 1999 c 143 § 53; 1987 c 462 § 5; 1984 c 17 § 16.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

Chapter 10.99 RCW

DOMESTIC VIOLENCE—OFFICIAL RESPONSE

Sections

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10.99.020	Definitions.
10.99.030	Law enforcement officers—Training, powers, duties—Domestic violence reports.
10.99.040	Duties of court—No-contact order.
10.99.045	Appearances by defendant—Defendant's history—No-contact order.
10.99.050	Victim contact—Restriction, prohibition—Violation, penalties—Written order—Procedures—Notice of change.
10.99.055	Enforcement of orders.
10.99.060	Prosecutor's notice to victim—Description of available procedures.
10.99.070	Liability of peace officers.
10.99.080	Penalty assessment.
10.99.090	Policy adoption and implementation.
10.99.100	Sentencing—Factors—Defendant's criminal history.
10.99.900	Severability—1979 ex.s. c 105.
10.99.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Arrest without warrant in domestic violence cases: RCW 10.31.100(2).

Domestic violence prevention: Chapter 26.50 RCW.

Rape crisis centers: Chapters 70.123 and 70.125 RCW.

Shelters for victims of domestic violence: Chapter 70.123 RCW.

Victims, survivors, and witnesses of crimes: Chapter 7.69 RCW.

10.99.010 Purpose—Intent. The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic vio-

lence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship. [1979 ex.s. c 105 § 1.]

10.99.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(2) "Association" means the Washington association of sheriffs and police chiefs.

(3) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(4) "Dating relationship" has the same meaning as in RCW 26.50.010.

(5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
- (b) Assault in the second degree (RCW 9A.36.021);
- (c) Assault in the third degree (RCW 9A.36.031);
- (d) Assault in the fourth degree (RCW 9A.36.041);
- (e) Drive-by shooting (RCW 9A.36.045);
- (f) Reckless endangerment (RCW 9A.36.050);
- (g) Coercion (RCW 9A.36.070);
- (h) Burglary in the first degree (RCW 9A.52.020);
- (i) Burglary in the second degree (RCW 9A.52.030);
- (j) Criminal trespass in the first degree (RCW 9A.52.070);
- (k) Criminal trespass in the second degree (RCW 9A.52.080);
- (l) Malicious mischief in the first degree (RCW 9A.48.070);
- (m) Malicious mischief in the second degree (RCW 9A.48.080);
- (n) Malicious mischief in the third degree (RCW 9A.48.090);

- (o) Kidnapping in the first degree (RCW 9A.40.020);
- (p) Kidnapping in the second degree (RCW 9A.40.030);
- (q) Unlawful imprisonment (RCW 9A.40.040);
- (r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
- (s) Rape in the first degree (RCW 9A.44.040);
- (t) Rape in the second degree (RCW 9A.44.050);
- (u) Residential burglary (RCW 9A.52.025);
- (v) Stalking (RCW 9A.46.110); and
- (w) Interference with the reporting of domestic violence (RCW 9A.36.150).

(6) "Employee" means any person currently employed with an agency.

(7) "Sworn employee" means a general authority Washington peace officer as defined in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

(8) "Victim" means a family or household member who has been subjected to domestic violence. [2004 c 18 § 2; 2000 c 119 § 5; 1997 c 338 § 53; 1996 c 248 § 5; 1995 c 246 § 21; 1994 c 121 § 4; 1991 c 301 § 3; 1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

Findings—Intent—2004 c 18: "The legislature reaffirms its determination to reduce the incident rate of domestic violence. The legislature finds it is appropriate to help reduce the incident rate of domestic violence by addressing the need for improved coordination and accountability among general authority Washington law enforcement agencies and general authority Washington peace officers when reports of domestic violence are made and the alleged perpetrator is a general authority Washington peace officer. The legislature finds that coordination and accountability will be improved if general authority Washington law enforcement agencies adopt policies that meet statewide minimum requirements for training, reporting, interagency cooperation, investigation, and collaboration with groups serving victims of domestic violence. The legislature intends to provide maximum flexibility to general authority Washington law enforcement agencies, consistent with the purposes of this act, in their efforts to improve coordination and accountability when incidents of domestic violence committed or allegedly committed by general authority Washington peace officers are reported." [2004 c 18 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1991 c 301: "The legislature finds that:

The collective costs to the community for domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care, criminal justice, and social service costs.

Children growing up in violent homes are deeply affected by the violence as it happens and could be the next generation of batterers and victims.

Many communities have made headway in addressing the effects of domestic violence and have devoted energy and resources to stopping this violence. However, the process for breaking the cycle of abuse is lengthy. No single system intervention is enough in itself.

An integrated system has not been adequately funded and structured to assure access to a wide range of services, including those of the law/safety/justice system, human service system, and health care system. These services need to be coordinated and multidisciplinary in approach and address the needs of victims, batterers, and children from violent homes.

Given the lethal nature of domestic violence and its effect on all within its range, the community has a vested interest in the methods used to stop and

prevent future violence. Clear standards of quality are needed so that perpetrator treatment programs receiving public funds or court-ordered referrals can be required to comply with these standards.

While incidents of domestic violence are not caused by perpetrator's use of alcohol and illegal substances, substance abuse may be a contributing factor to domestic violence and the injuries and deaths that result from it.

There is a need for consistent training of professionals who deal frequently with domestic violence or are in a position to identify domestic violence and provide support and information.

Much has been learned about effective interventions in domestic violence situations; however, much is not yet known and further study is required to know how to best stop this violence." [1991 c 301 § 1.]

Domestic violence defined under the Domestic Violence Prevention Act: RCW 26.50.010.

Additional notes found at www.leg.wa.gov

10.99.030 Law enforcement officers—Training, powers, duties—Domestic violence reports. (1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The criminal justice training commission shall implement by January 1, 1997, a course of instruction for the training of law enforcement officers in Washington in the handling of domestic violence complaints. The basic law enforcement curriculum of the criminal justice training commission shall include at least twenty hours of basic training instruction on the law enforcement response to domestic violence. The course of instruction, the learning and performance objectives, and the standards for the training shall be developed by the commission and focus on enforcing the criminal laws, safety of the victim, and holding the perpetrator accountable for the violence. The curriculum shall include training on the extent and prevalence of domestic violence, the importance of criminal justice intervention, techniques for responding to incidents that minimize the likelihood of officer injury and that promote victim safety, investigation and interviewing skills, evidence gathering and report writing, assistance to and services for victims and children, verification and enforcement of court orders, liability, and any additional provisions that are necessary to carry out the intention of this subsection.

(3) The criminal justice training commission shall develop and update annually an in-service training program to familiarize law enforcement officers with the domestic violence laws. The program shall include techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of all parties. The commission shall make the training program available to all law enforcement agencies in the state.

(4) Development of the training in subsections (2) and (3) of this section shall be conducted in conjunction with agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, and representatives to the statewide organization providing training and education to these organizations and to the general public.

(5) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(6)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(7) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a statewide twenty-four-hour toll-free hot line at (include appropriate phone number). The battered women's shelter and other resources in your area are (include local information)"

(8) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(9) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(10) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(11) Records kept pursuant to subsections (6) and (10) of this section shall be made identifiable by means of a departmental code for domestic violence.

(12) Commencing January 1, 1994, records of incidents of domestic violence shall be submitted, in accordance with procedures described in this subsection, to the Washington association of sheriffs and police chiefs by all law enforcement agencies. The Washington criminal justice training commission shall amend its contract for collection of state-wide crime data with the Washington association of sheriffs and police chiefs:

(a) To include a table, in the annual report of crime in Washington produced by the Washington association of sheriffs and police chiefs pursuant to the contract, showing the total number of actual offenses and the number and percent of the offenses that are domestic violence incidents for the following crimes: (i) Criminal homicide, with subtotals for murder and nonnegligent homicide and manslaughter by negligence; (ii) forcible rape, with subtotals for rape by force and attempted forcible rape; (iii) robbery, with subtotals for firearm, knife or cutting instrument, or other dangerous weapon, and strongarm robbery; (iv) assault, with subtotals for firearm, knife or cutting instrument, other dangerous weapon, hands, feet, aggravated, and other nonaggravated assaults; (v) burglary, with subtotals for forcible entry, nonforcible unlawful entry, and attempted forcible entry; (vi) larceny theft, except motor vehicle theft; (vii) motor vehicle theft, with subtotals for autos, trucks and buses, and other vehicles; (viii) arson; and (ix) violations of the provisions of a protection order or no-contact order restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, provided that specific appropriations are subsequently made for the collection and compilation of data regarding violations of protection orders or no-contact orders;

(b) To require that the table shall continue to be prepared and contained in the annual report of crime in Washington until that time as comparable or more detailed information about domestic violence incidents is available through the Washington state incident based reporting system and the information is prepared and contained in the annual report of crime in Washington; and

(c) To require that, in consultation with interested persons, the Washington association of sheriffs and police chiefs prepare and disseminate procedures to all law enforcement agencies in the state as to how the agencies shall code and report domestic violence incidents to the Washington association of sheriffs and police chiefs. [1996 c 248 § 6; 1995 c 246 § 22; 1993 c 350 § 3; 1984 c 263 § 21; 1981 c 145 § 5; 1979 ex.s. c 105 § 3.]

Findings—Severability—1993 c 350: See notes following RCW 26.50.035.

Additional notes found at www.leg.wa.gov

10.99.040 Duties of court—No-contact order. (1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2), (3), or (7) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a

violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection. [2012 c 223 § 3; 2010 c 274 § 309; 2000 c 119 § 18; 1997 c 338 § 54; 1996 c 248 § 7; 1995 c 246 § 23; 1994 sp.s. c 7 § 449; 1992 c 86 § 2; 1991 c 301 § 4; 1985 c 303 § 10; 1984 c 263 § 22; 1983 c 232 § 7; 1981 c 145 § 6; 1979 ex.s. c 105 § 4.]

Intent—2010 c 274: See note following RCW 10.31.100.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Finding—1991 c 301: See note following RCW 10.99.020.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders for protection in cases of domestic violence: RCW 26.50.030, 26.50.070.

Temporary restraining order: RCW 26.09.060.

Additional notes found at www.leg.wa.gov

10.99.045 Appearances by defendant—Defendant's history—No-contact order. (1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020 shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020 and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3)(a) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The court may include in the order any conditions authorized under RCW 9.41.800 and 10.99.040.

(b) For the purposes of (a) of this subsection, the prosecutor shall provide for the court's review:

(i) The defendant's criminal history, if any, that occurred in Washington or any other state;

(ii) If available, the defendant's criminal history that occurred in any tribal jurisdiction; and

(iii) The defendant's individual order history.

(c) For the purposes of (b) of this subsection, criminal history includes all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in (d) of this subsection before the date of the appearance.

(d) The periods applicable to previous convictions and orders of deferred prosecution are:

(i) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and

(ii) Seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For the purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and (6). [2010 c 274 § 301; 2000 c 119 § 19; 1998 c 55 § 2; 1994 sp.s. c 7 § 450; 1984 c 263 § 23; 1983 c 232 § 8; 1981 c 145 § 7.]

Intent—2010 c 274: See note following RCW 10.31.100.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

10.99.050 Victim contact—Restriction, prohibition—Violation, penalties—Written order—Procedures—Notice of change. (1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2)(a) Willful violation of a court order issued under this section is punishable under RCW 26.50.110.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement

agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

(4) If an order prohibiting contact issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system. [2000 c 119 § 20; 1997 c 338 § 55; 1996 c 248 § 8; 1991 c 301 § 5; 1985 c 303 § 12; 1984 c 263 § 24; 1979 ex.s. c 105 § 5.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1991 c 301: See note following RCW 10.99.020.

Additional notes found at www.leg.wa.gov

10.99.055 Enforcement of orders. A peace officer in this state shall enforce an order issued by any court in this state restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order. [1984 c 263 § 25; 1983 c 232 § 9; 1981 c 145 § 8.]

Additional notes found at www.leg.wa.gov

10.99.060 Prosecutor's notice to victim—Description of available procedures. The public attorney responsible for making the decision whether or not to prosecute shall advise the victim of that decision within five days, and, prior to making that decision shall advise the victim, upon the victim's request, of the status of the case. Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding. [1979 ex.s. c 105 § 6.]

10.99.070 Liability of peace officers. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident. [1979 ex.s. c 105 § 7.]

10.99.080 Penalty assessment. (1) All superior courts, and courts organized under Title 3 or 35 RCW, may impose a penalty assessment not to exceed one hundred dollars on any person convicted of a crime involving domestic violence. The assessment shall be in addition to, and shall not supersede, any other penalty, restitution, fines, or costs provided by law.

(2) Revenue from the assessment shall be used solely for the purposes of establishing and funding domestic violence advocacy and domestic violence prevention and prosecution programs in the city or county of the court imposing the assessment. Revenue from the assessment shall not be used

for indigent criminal defense. If the city or county does not have domestic violence advocacy or domestic violence prevention and prosecution programs, cities and counties may use the revenue collected from the assessment to contract with recognized community-based domestic violence program providers.

(3) The assessment imposed under this section shall not be subject to any state or local remittance requirements under chapter 3.46, 3.50, 3.62, 7.68, 10.82, or 35.20 RCW.

(4) For the purposes of this section, "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine. For the purposes of this section, "domestic violence" has the same meaning as that term is defined under RCW 10.99.020 and includes violations of equivalent local ordinances.

(5) When determining whether to impose a penalty assessment under this section, judges are encouraged to solicit input from the victim or representatives for the victim in assessing the ability of the convicted offender to pay the penalty, including information regarding current financial obligations, family circumstances, and ongoing restitution. [2004 c 15 § 2.]

Intent—2004 c 15: "The legislature recognizes that domestic violence is a growing and more visible public safety problem in Washington state than ever before, and that domestic violence-related incidents have a significant bearing on overall law enforcement and court caseloads. The legislature further recognizes the growing costs associated with domestic violence prevention and advocacy programs established by local governments and by community-based organizations.

It is the legislature's intent to establish a penalty in law that will hold convicted domestic violence offenders accountable while requiring them to pay penalties to offset the costs of domestic violence advocacy and prevention programs. It is the legislature's intent that the penalties imposed against convicted domestic violence offenders under section 2 of this act be used for established domestic violence prevention and prosecution programs. It is the legislature's intent that the revenue from the penalty assessment shall be in addition to existing sources of funding to enhance or help prevent the reduction and elimination of domestic violence prevention and prosecution programs." [2004 c 15 § 1.]

10.99.090 Policy adoption and implementation. (1) By December 1, 2004, the association shall develop a written model policy on domestic violence committed or allegedly committed by sworn employees of agencies. In developing the policy, the association shall convene a work group consisting of representatives from the following entities and professions:

(a) Statewide organizations representing state and local enforcement officers;

(b) A statewide organization providing training and education for agencies having the primary responsibility of serving victims of domestic violence with emergency shelter and other services; and

(c) Any other organization or profession the association determines to be appropriate.

(2) Members of the work group shall serve without compensation.

(3) The model policy shall provide due process for employees and, at a minimum, meet the following standards:

(a) Provide prehire screening procedures reasonably calculated to disclose whether an applicant for a sworn employee position:

(i) Has committed or, based on credible sources, has been accused of committing an act of domestic violence;

(ii) Is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect; or

(iii) Is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(b) Provide for the mandatory, immediate response to acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(c) Provide to a sworn employee, upon the request of the sworn employee or when the sworn employee has been alleged to have committed an act of domestic violence, information on programs under RCW 26.50.150;

(d) Provide for the mandatory, immediate reporting by employees when an employee becomes aware of an allegation of domestic violence committed or allegedly committed by a sworn employee of the agency employing the sworn employee;

(e) Provide procedures to address reporting by an employee who is the victim of domestic violence committed or allegedly committed by a sworn employee of an agency;

(f) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency when an agency in any jurisdiction has responded to a domestic violence call in which the sworn employee committed or allegedly committed an act of domestic violence;

(g) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency if the employee is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect, or is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(h) Provide for the performance of prompt separate and impartial administrative and criminal investigations of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(i) Provide for appropriate action to be taken during an administrative or criminal investigation of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency. The policy shall provide procedures to address, in a manner consistent with applicable law and the agency's ability to maintain public safety within its jurisdiction, whether to relieve the sworn employee of agency-issued weapons and other agency-issued property and whether to suspend the sworn employee's power of arrest or other police powers pending resolution of any investigation;

(j) Provide for prompt and appropriate discipline or sanctions when, after an agency investigation, it is determined that a sworn employee has committed an act of domestic violence;

(k) Provide that, when there has been an allegation of domestic violence committed or allegedly committed by a sworn employee, the agency immediately make available to the alleged victim the following information:

(i) The agency's written policy on domestic violence committed or allegedly committed by sworn employees;

(ii) Information, including but not limited to contact information, about public and private nonprofit domestic violence advocates and services; and

(iii) Information regarding relevant confidentiality policies related to the victim's information;

(l) Provide procedures for the timely response, consistent with chapters 42.56 and 10.97 RCW, to an alleged victim's inquiries into the status of the administrative investigation and the procedures the agency will follow in an investigation of domestic violence committed or allegedly committed by a sworn employee;

(m) Provide procedures requiring an agency to immediately notify the employing agency of a sworn employee when the notifying agency becomes aware of acts or allegations of domestic violence committed or allegedly committed by the sworn employee within the jurisdiction of the notifying agency; and

(n) Provide procedures for agencies to access and share domestic violence training within their jurisdiction and with other jurisdictions.

(4) By June 1, 2005, every agency shall adopt and implement a written policy on domestic violence committed or allegedly committed by sworn employees of the agency that meet the minimum standards specified in this section. In lieu of developing its own policy, the agency may adopt the model policy developed by the association under this section. In developing its own policy, or before adopting the model policy, the agency shall consult public and private nonprofit domestic violence advocates and any other organizations and professions the agency finds appropriate.

(5)(a) Except as provided in this section, not later than June 30, 2006, every sworn employee of an agency shall be trained by the agency on the agency's policy required under this section.

(b) Sworn employees hired by an agency on or after March 1, 2006, shall, within six months of beginning employment, be trained by the agency on the agency's policy required under this section.

(6)(a) By June 1, 2005, every agency shall provide a copy of its policy developed under this section to the association and shall provide a statement notifying the association of whether the agency has complied with the training required under this section. The copy and statement shall be provided in electronic format unless the agency is unable to do so. The agency shall provide the association with any revisions to the policy upon adoption.

(b) The association shall maintain a copy of each agency's policy and shall provide to the governor and legislature not later than January 1, 2006, a list of those agencies that have not developed and submitted policies and those agencies that have not stated their compliance with the training required under this section.

(c) The association shall, upon request and within its resources, provide technical assistance to agencies in developing their policies. [2005 c 274 § 209; 2004 c 18 § 3.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Findings—Intent—2004 c 18: See note following RCW 10.99.020.

10.99.100 Sentencing—Factors—Defendant’s criminal history. (1) In sentencing for a crime of domestic violence as defined in this chapter, courts of limited jurisdiction shall consider, among other factors, whether:

(a) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;

(b) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and

(c) The offense occurred within sight or sound of the victim’s or the offender’s minor children under the age of eighteen years.

(2)(a) In sentencing for a crime of domestic violence as defined in this chapter, the prosecutor shall provide for the court’s review:

(i) The defendant’s criminal history, if any, that occurred in Washington or any other state;

(ii) If available, the defendant’s prior criminal history that occurred in any tribal jurisdiction; and

(iii) The defendant’s individual order history.

(b) For the purposes of (a) of this subsection, criminal history includes all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in (c) of this subsection before the date of sentencing.

(c) The periods applicable to previous convictions and orders of deferred prosecution are:

(i) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and

(ii) Seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For the purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis. [2010 c 274 § 404.]

Intent—2010 c 274: See note following RCW 10.31.100.

10.99.900 Severability—1979 ex.s. c 105. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 105 § 9.]

10.99.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and

applicable to individuals in state registered domestic partnerships. [2009 c 521 § 29.]

Chapter 10.101 RCW INDIGENT DEFENSE SERVICES

Sections

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10.101.080	City moneys.
10.101.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

10.101.005 Legislative finding. The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. [2005 c 157 § 1; 1989 c 409 § 1.]

10.101.010 Definitions. The following definitions shall be applied in connection with this chapter:

(1) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(2) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant’s basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations.

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind,

or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(4) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost. [2011 1st sp.s. c 36 § 12; 2010 1st sp.s. c 8 § 12; 1998 c 79 § 2; 1997 c 59 § 3; 1989 c 409 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

10.101.020 Determination of indigency—Provisional appointment—Promissory note. (1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter.

(2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.

(6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the office of public defense, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter. [1997 c 41 § 5; 1989 c 409 § 3.]

10.101.030 Standards. Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards. [2005 c 157 § 2; 1989 c 409 § 4.]

10.101.040 Selection of defense attorneys. City attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will provide indigent defense services. [1989 c 409 § 5.]

10.101.050 Appropriated funds—Application, reports. The Washington state office of public defense shall disburse appropriated funds to counties and cities for the purpose of improving the quality of public defense services. Counties may apply for up to their pro rata share as set forth in RCW 10.101.060 provided that counties conform to application procedures established by the office of public defense and improve the quality of services for both juveniles and adults. Cities may apply for moneys pursuant to the grant program set forth in RCW 10.101.080. In order to receive funds, each applying county or city must require that attorneys providing public defense services attend training approved by the office of public defense at least once per calendar year. Each applying county or city shall report the expenditure for all public defense services in the previous calendar year, as well as case statistics for that year, including per attorney caseloads, and shall provide a copy of each cur-

rent public defense contract to the office of public defense with its application. Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases. [2005 c 157 § 3.]

10.101.060 Appropriated funds—Use requirements.

(1)(a) Subject to the availability of funds appropriated for this purpose, the office of public defense shall disburse to applying counties that meet the requirements of RCW 10.101.050 designated funds under this chapter on a pro rata basis pursuant to the formula set forth in RCW 10.101.070 and shall disburse to eligible cities, funds pursuant to RCW 10.101.080. Each fiscal year for which it receives state funds under this chapter, a county or city must document to the office of public defense that it is meeting the standards for provision of indigent defense services as endorsed by the Washington state bar association or that the funds received under this chapter have been used to make appreciable demonstrable improvements in the delivery of public defense services, including the following:

(i) Adoption by ordinance of a legal representation plan that addresses the factors in RCW 10.101.030. The plan must apply to any contract or agency providing indigent defense services for the county or city;

(ii) Requiring attorneys who provide public defense services to attend training under RCW 10.101.050;

(iii) Requiring attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies. This subsection (1)(a)(iii) does not apply to cities receiving funds under RCW 10.101.050 through 10.101.080;

(iv) Requiring contracts to address the subject of compensation for extraordinary cases;

(v) Identifying funding specifically for the purpose of paying experts (A) for which public defense attorneys may file ex parte motions, or (B) which should be specifically designated within a public defender agency budget;

(vi) Identifying funding specifically for the purpose of paying investigators (A) for which public defense attorneys may file ex parte motions, and (B) which should be specifically designated within a public defender agency budget.

(b) The cost of providing counsel in cases where there is a conflict of interest shall not be borne by the attorney or agency who has the conflict.

(2) The office of public defense shall determine eligibility of counties and cities to receive state funds under this chapter. If a determination is made that a county or city receiving state funds under this chapter did not substantially comply with this section, the office of public defense shall notify the county or city of the failure to comply and unless the county or city contacts the office of public defense and substantially corrects the deficiencies within ninety days after the date of notice, or some other mutually agreed period of

time, the county's or city's eligibility to continue receiving funds under this chapter is terminated. If an applying county or city disagrees with the determination of the office of public defense as to the county's or city's eligibility, the county or city may file an appeal with the advisory committee of the office of public defense within thirty days of the eligibility determination. The decision of the advisory committee is final. [2005 c 157 § 4.]

10.101.070 County moneys. The moneys shall be distributed to each county determined to be eligible to receive moneys by the office of public defense as determined under this section. Ninety percent of the funding appropriated shall be designated as "county moneys" and shall be distributed as follows:

(1) Six percent of the county moneys appropriated shall be distributed as a base allocation among the eligible counties. A county's base allocation shall be equal to this six percent divided by the total number of eligible counties.

(2) Ninety-four percent of the county moneys appropriated shall be distributed among the eligible counties as follows:

(a) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the population of the county as a percentage of the total population of all eligible counties; and

(b) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all eligible counties.

(3) Under this section:

(a) The population of the county is the most recent number determined by the office of financial management;

(b) The annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(c) Distributions and eligibility for distributions in the 2005-2007 biennium shall be based on 2004 figures for the annual number of criminal cases that are filed as described under (b) of this subsection. Future distributions shall be based on the most recent figures for the annual number of criminal cases that are filed as described under (b) of this subsection. [2005 c 157 § 5.]

10.101.080 City moneys. The moneys under RCW 10.101.050 shall be distributed to each city determined to be eligible under this section by the office of public defense. Ten percent of the funding appropriated shall be designated as "city moneys" and distributed as follows:

(1) The office of public defense shall administer a grant program to select the cities eligible to receive city moneys. Incorporated cities may apply for grants. Applying cities must conform to the requirements of RCW 10.101.050 and 10.101.060.

(2) City moneys shall be distributed in a timely manner to accomplish the goals of the grants.

(3) Criteria for award of grants shall be established by the office of public defense after soliciting input from the association of Washington cities. Award of the grants shall

be determined by the office of public defense. [2007 c 59 § 1; 2005 c 157 § 6.]

10.101.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 30.]

Chapter 10.105 RCW PROPERTY INVOLVED IN A FELONY

Sections

10.105.010 Seizure and forfeiture.
10.105.900 Application.

10.105.010 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the felony.

(2) Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

(3) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court

that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(7) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(a) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(c) Retained property and net proceeds not required to be paid to the state treasurer, or otherwise required to be spent under this section, shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources. [2009 c 479 § 15; 1993 c 288 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

10.105.900 Application. This chapter does not apply to property subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9A.82.100, 9A.83.030, 7.48.090, or 77.15.070. [2003 c 39 § 6; 1994 c 218 § 18; 1993 c 288 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 10.108 RCW BLUE ALERT SYSTEM

Sections

- 10.108.010 Declaration.
- 10.108.020 Definitions.
- 10.108.030 Blue alert system—Plan—Activation—Termination.
- 10.108.040 Liability immunity.

10.108.010 Declaration. There is currently no system in place in Washington state to expedite the apprehension of

violent criminals who seriously injure or kill local, state, or federal law enforcement officers. Other states have adopted blue alert systems to achieve this objective. The legislature declares that it is necessary to create a statewide blue alert system to speed the apprehension of violent criminals who kill or seriously injure local, state, or federal law enforcement officers. [2012 c 37 § 1.]

10.108.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blue alert system" means a quick response system designed to issue and coordinate alerts following an attack upon a law enforcement officer.

(2) "Investigating law enforcement agency" means the law enforcement agency that has primary jurisdiction over the area or has been delegated and accepted investigatory responsibility in which a law enforcement officer has been seriously injured or killed.

(3) "Law enforcement agency" means a general [authority Washington] law enforcement agency as defined in RCW 10.93.020 and a limited [authority Washington] law enforcement agency as defined in RCW 10.93.020. Such agencies shall include, but are not limited to, the following:

(a) The Washington state patrol;

(b) All law enforcement agencies and police departments of any political subdivision of the state; and

(c) The department of corrections.

(4) "Law enforcement officer" includes police officers, the attorney general and the attorney general's deputies, sheriffs and their regular deputies, corrections officers, tribal law enforcement officers, park rangers, state fire marshals, municipal fire marshals, sworn members of the city fire departments, county and district firefighters, and agents of the department of fish and wildlife. "Law enforcement officer" also includes an employee of a federal governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and who has statutory powers of arrest.

(5) "Officer's employing law enforcement agency" means the law enforcement agency by which the officer is employed. [2012 c 37 § 2.]

10.108.030 Blue alert system—Plan—Activation—Termination. (1) Within existing resources, the Washington state patrol, in partnership with the Washington association of sheriffs and police chiefs, shall develop and implement a plan, commonly known as a blue alert system, consistent with the Amber alert program, endangered missing person advisory plan, and the missing person clearinghouse, for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in apprehending persons suspected of killing or seriously injuring a law enforcement officer. The blue alert system shall include the following:

(a) Procedures to provide support to the investigating law enforcement agency as a resource for the receipt and dissemination of information regarding the suspect and the suspect's whereabouts and/or method of escape;

(b) The process for reporting the information to designated media outlets in Washington; and

(c) Criteria for the investigating law enforcement agency to determine quickly whether an officer has been seriously injured or killed and a blue alert therefore needs to be requested.

(2) The investigating law enforcement agency may request activation of the blue alert system and notify appropriate participants in the blue alert system, when the investigating law enforcement agency believes that:

(a) A suspect has not been apprehended;

(b) A suspect may be a serious threat to the public;

(c) Sufficient information is available to disseminate to the public that could assist in locating and apprehending the suspect;

(d) Release of the information will not compromise the investigation; and

(e) Criteria to ensure that releasing the victim information is proper, as to avoid improper next of kin notification.

(3) When a blue alert is activated, the investigating law enforcement agency shall provide descriptive information under the criminal justice information act, chapter 10.98 RCW, and the national crime information center system.

(4) The investigating law enforcement agency shall terminate the blue alert with respect to a particular suspect when the suspect is located or the incident is otherwise resolved, or when the investigating law enforcement agency determines that the blue alert system is no longer an effective tool for locating and apprehending the suspect. [2012 c 37 § 3.]

10.108.040 Liability immunity. No cause of action shall be maintained for civil damages in any court of this state against any radio or television broadcasting station or cable television system, or the employees, officers, directors, managers, or agents of the radio or television broadcasting station or cable television system, based on the broadcast of information supplied by law enforcement officials pursuant to the provisions of this chapter. Nothing in this section shall be construed to limit or restrict in any way any immunity or privilege a radio or television broadcasting station or cable television system may have under statute or common law for broadcasting or otherwise disseminating information. [2012 c 37 § 4.]

Title 11

PROBATE AND TRUST LAW

Chapters

- 11.02 General provisions.
- 11.04 Descent and distribution.
- 11.05A Uniform simultaneous death act.
- 11.07 Nonprobate assets on dissolution or invalidation of marriage.
- 11.08 Escheats.
- 11.10 Abatement of assets.
- 11.11 Testamentary disposition of nonprobate assets act.
- 11.12 Wills.
- 11.18 Liability of beneficiary of nonprobate asset.
- 11.20 Custody, proof, and probate of wills.
- 11.24 Will contests.
- 11.28 Letters testamentary and of administration.
- 11.32 Special administrators.
- 11.36 Qualifications of personal representatives.
- 11.40 Claims against estate.
- 11.42 Settlement of creditor claims for estates passing without probate.
- 11.44 Inventory and appraisal.
- 11.48 Personal representatives—General provisions—Actions by and against.
- 11.54 Family support and postdeath creditor's claim exemptions.
- 11.56 Sales, exchanges, leases, mortgages, and borrowing.
- 11.60 Performance of decedent's contracts.
- 11.62 Small estates—Disposition of property.
- 11.64 Partnership property.
- 11.66 Social security benefits.
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- 11.80 Estates of absentees.
- 11.84 Inheritance rights of slayers or abusers.
- 11.86 Disclaimer of interests.
- 11.88 Guardianship—Appointment, qualification, removal of guardians.
- 11.90 Uniform adult guardianship and protective proceedings jurisdiction act.
- 11.92 Guardianship—Powers and duties of guardian or limited guardian.
- 11.94 Power of attorney.
- 11.95 Powers of appointment.
- 11.96A Trust and estate dispute resolution.
- 11.97 Effect of trust instrument.
- 11.98 Trusts.
- 11.99 Construction.
- 11.100 Investment of trust funds.
- 11.102 Common trust funds.
- 11.103 Revocable trusts.
- 11.104A Washington principal and income act of 2002.
- 11.106 Trustees' accounting act.
- 11.108 Miscellaneous provisions for distributions made by a governing instrument.
- 11.110 Charitable trusts.
- 11.114 Uniform transfers to minors act.
- 11.118 Trusts—Animals.

Rules of court:

- compensation, reports: SPR 98.12W.*
- guardians, receivers, personal representatives compromise and settlement: SPR 98.08W.*
- receivers, reports by: SPR 98.10W.*
- Cemetery plots, inheritance: Chapter 68.32 RCW.*
- Community property agreements: Chapter 26.16 RCW.*
- Coroner's duty as to property of deceased: RCW 36.24.130, 36.24.180.*
- Court commissioners, powers in probate matters: RCW 2.24.040.*
- Donation of human remains for medical purposes: Chapter 68.64 RCW.*
- Evidence, transaction with person since deceased: RCW 5.60.030.*
- Fees, collection by superior court clerk: RCW 27.24.070, 36.18.020.*
- Joint tenancy: Chapter 64.28 RCW.*
- Jurisdiction: RCW 2.08.010, 2.08.190; State Constitution Art. 4 §§ 4 and 6 (Amendment 28).*
- Life insurance payable to trustee named as beneficiary in policy or will: RCW 48.18.450, 48.18.452.*
- Partition of real property: Chapter 7.52 RCW.*
- Production of pretended heir: Chapter 9A.60 RCW.*
- Replacement of lost or destroyed probate records: RCW 5.48.060.*
- Stock certificates—Joint tenancy—Transfer pursuant to direction of survivor: RCW 23B.07.240.*
- Veterans' estates, appointment of director of veterans' affairs to act as fiduciary: RCW 73.04.130.*
- Wages*
 - payment on death of employee: RCW 49.48.120.*
 - preference on death of employer: RCW 49.56.020.*
- Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.*

Chapter 11.02 RCW GENERAL PROVISIONS

Sections

- 11.02.001 Section headings in Title 11 RCW not part of law.
- 11.02.005 Definitions and use of terms.
- 11.02.070 Community property—Disposition—Probate administration of.
- 11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights, and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117.
- 11.02.091 Written instrument—Limit on characterization as testamentary.
- 11.02.100 Transfer of shares of record—Dividends.
- 11.02.110 Transfer of shares or securities—Presumption of joint tenancy.
- 11.02.120 Transfer of shares—Liability.
- 11.02.130 Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death.
- 11.02.900 Short title—Washington trust act of 1984.
- 11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985.
- 11.02.902 Purpose—1985 c 30.
- 11.02.903 Severability—1985 c 30.

11.02.001 Section headings in Title 11 RCW not part of law. Section headings, as found in Title 11 RCW, do not constitute any part of the law. [1985 c 30 § 3. Prior: 1984 c 149 § 179.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.02.005 Definitions and use of terms. When used in this title, unless otherwise required from the context:

(1) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(2) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(3) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(4) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(5) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(6) "Heirs" denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(8) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(9) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(10) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04

RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(11) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(12) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(13) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left issue surviving the decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

(14) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

(15) "Settlor" has the same meaning as provided for "trustor" in this section.

(16) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(17) "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that

does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

(18) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(19) "Trustor" means a person, including a testator, who creates, or contributes property to, a trust.

(20) "Will" means an instrument validly executed as required by RCW 11.12.020.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also. [2011 c 327 § 1; 2008 c 6 § 901; 2007 c 475 § 1; 2005 c 97 § 1; 2001 c 320 § 1; 2000 c 130 § 1; 1999 c 358 § 20; 1998 c 292 § 117; 1997 c 252 § 1; 1994 c 221 § 1; 1993 c 73 § 1; 1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Severability—2007 c 475: See RCW 11.05A.903.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

Additional notes found at www.leg.wa.gov

11.02.070 Community property—Disposition—Probate administration of. Except as provided in RCW 41.04.273 and 11.84.025, upon the death of a decedent, a one-half share of the community property shall be confirmed to the surviving spouse or surviving domestic partner, and the other one-half share shall be subject to testamentary disposition by the decedent, or shall descend as provided in chapter 11.04 RCW. The whole of the community property shall be subject to probate administration for all purposes of this title, including the payment of obligations and debts of the community, the award in lieu of homestead, the allowance for family support, and any other matter for which the community property would be responsible or liable if the decedent were living. [2008 c 6 § 902; 1998 c 292 § 504; 1967 c 168 § 1.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Descent and distribution of community property: RCW 11.04.015(1).

Disposition of quasi-community property: RCW 26.16.230.

Additional notes found at www.leg.wa.gov

(2012 Ed.)

11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights, and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117. On and after October 1, 1974:

(1) The provisions of chapter 117, Laws of 1974 ex. sess. shall apply to any wills of decedents dying thereafter;

(2) The provisions of chapter 117, Laws of 1974 ex. sess. shall apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of chapter 117, Laws of 1974 ex. sess.;

(3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on October 1, 1974, continues to hold the appointment, has the powers conferred by chapter 117, Laws of 1974 ex. sess. and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) An act done before October 1, 1974 in any proceeding and any accrued right is not impaired by chapter 117, Laws of 1974 ex. sess. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before October 1, 1974, the provisions shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in chapter 117, Laws of 1974 ex. sess. applies to instruments executed before October 1, 1974 unless there is a clear indication of a contrary intent. [1974 ex.s. c 117 § 1.]

Legislative directive—Part headings not part of law: "(1) Sections 4 and 5 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(2) Sections 52 and 53 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(3) Part headings employed in this 1974 amendatory act do not constitute any part of the law and shall not be codified by the code reviser and shall not become a part of the Revised Code of Washington." [1974 ex.s. c 117 § 2.]

Additional notes found at www.leg.wa.gov

11.02.091 Written instrument—Limit on characterization as testamentary. (1) An otherwise effective written instrument of transfer may not be deemed testamentary solely because of a provision for a nonprobate transfer at death in the instrument.

(2) "Provision for a nonprobate transfer at death" as used in subsection (1) of this section includes, but is not limited to, a written provision that:

(a) Money or another benefit up to that time due to, controlled, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or a separate writing, including a will, executed at any time;

(b) Money or another benefit due or to become due under the instrument ceases to be payable in the event of the death of the promisee or the promisor before payment or demand; or

(c) Property, controlled by or owned by the decedent before death, that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed at any time.

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(3) "Otherwise effective written instrument of transfer" as used in subsection (1) of this section means: An insurance policy; a contract of employment; a bond; a mortgage; a promissory note; a certified or uncertified security; an account agreement; a compensation plan; a pension plan; an individual retirement plan; an employee benefit plan; a joint tenancy; a community property agreement; a trust; a conveyance; a deed of gift; a contract; or another written instrument of a similar nature that would be effective if it did not contain provision for a nonprobate transfer at death.

(4) This section only eliminates a requirement that instruments of transfer comply with formalities for executing wills under chapter 11.12 RCW. This section does not make a written instrument effective as a contract, gift, conveyance, deed, or trust that would not otherwise be effective as such for reasons other than failure to comply with chapter 11.12 RCW.

(5) This section does not limit the rights of a creditor under other laws of this state. [1993 c 291 § 2.]

11.02.100 Transfer of shares of record—Dividends.

Shares of record in the name of a spouse or domestic partner may be transferred by such person, such person's agent or attorney, without the signature of such person's spouse or domestic partner. All dividends payable upon any shares of a corporation standing in the name of a spouse or domestic partner, shall be paid to such spouse or domestic partner, such person's agent or attorney, in the same manner as if such person were unmarried or not in a state registered domestic partnership, and it shall not be necessary for the other spouse or domestic partner to join in a receipt therefor; and any proxy or power given by a spouse or domestic partner, touching any shares of any corporation standing in such person's name, shall be valid and binding without the signature of the other spouse or other domestic partner. [2008 c 6 § 903; 1990 c 180 § 7.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.02.110 Transfer of shares or securities—Presumption of joint tenancy. Whenever shares or other securities issued by domestic or foreign corporations are or have been issued or transferred to two or more persons in joint tenancy form on the books or records of the corporation, it is presumed in favor of the corporation, its registrar and its transfer agent that the shares or other securities are owned by such persons in joint tenancy and not otherwise. A domestic or foreign corporation or its registrar or transfer agent is not liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving joint tenant or tenants any share or shares or other securities theretofore issued by the corporation to two or more persons in joint tenancy form on the books or records of the corporation, unless the transfer was made with actual knowledge by the corporation or by its registrar or transfer agent of the existence of any understanding, agreement, condition, or evidence that the shares or securities were held other than in joint tenancy, or of the invalidity of the joint tenancy or a breach of trust by the joint tenants. [1990 c 180 § 8.]

11.02.120 Transfer of shares—Liability. Neither a domestic or foreign corporation or its registrar or transfer agent shall be liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving spouse or the surviving domestic partner any share or shares or other securities theretofore issued by the corporation to the deceased or surviving spouse or both, or to the deceased or surviving domestic partner or both, if the corporation or its registrar or transfer agent shall be provided with the following:

(1) A copy of an agreement which shall have been entered into between the spouses or between the domestic partners pursuant to RCW 26.16.120 and certified by the auditor of the county in this state in whose office the same shall have been recorded;

(2) A certified copy of the death certificate of the deceased spouse or deceased domestic partner;

(3) An affidavit of the surviving spouse or surviving domestic partner that:

(a) The shares or other securities constituted community property of the spouses or the domestic partners at date of death of the deceased spouse or deceased domestic partner and their disposition is controlled by the community property agreement;

(b) No proceedings have been instituted to contest or set aside or cancel the agreement; and that

(c) The claims of creditors have been paid or provided for. [2008 c 6 § 904; 1990 c 180 § 9.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.02.130 Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death. A provision in a lease of a safety deposit repository to the effect that two or more persons have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of the repository and devolution of title to those contents is determined according to rules of law without regard to the lease provisions. [1993 c 291 § 3.]

11.02.900 Short title—Washington trust act of 1984. Chapter 149, Laws of 1984, as amended and reenacted in chapters 8, 9, 10, 11, 23, 30, and 31, Laws of 1985 shall be known as the Washington trust act of 1984. [1985 c 30 § 2.]

11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. (1) Nothing in chapter 8, 9, 10, 11, 23, 30, or 31, Laws of 1985 shall invalidate or nullify:

(a) Any instrument or property relationship that is executed and irrevocable as of the April 10, 1985; or

(b) Any action undertaken in a proceeding where the action was commenced before April 10, 1985, as long as the instrument, property relationship, or action complies with chapter 149, Laws of 1984.

(2) Except as specifically provided otherwise in chapter 149, Laws of 1984 as amended and reenacted in 1985, chapter 149, Laws of 1984 as amended and reenacted in 1985 shall apply to all instruments, property relationships, and proceedings existing on January 1, 1985. [1985 c 30 § 139.]

11.02.902 Purpose—1985 c 30. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 30 § 1.]

11.02.903 Severability—1985 c 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 144.]

Chapter 11.04 RCW

DESCENT AND DISTRIBUTION

Sections

11.04.015	Descent and distribution of real and personal estate.
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11.04.085	Inheritance by adopted child.
11.04.095	Inheritance from stepparent avoids escheat.
11.04.230	United States savings bond—Effect of death of co-owner.
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11.04.250	When real estate vests—Rights of heirs.
11.04.290	Vesting of title.

Inheritance rights of slayers or abusers: Chapter 11.84 RCW.

11.04.015 Descent and distribution of real and personal estate. The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

- (a) All of the decedent’s share of the net community estate; and
- (b) One-half of the net separate estate if the intestate is survived by issue; or
- (c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his or her parents, or by one or more of the issue of one or more of his or her parents; or
- (d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [2010 c 8 § 2001; 2007 c 156 § 27; 1974 ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property disposition: RCW 11.02.070. generally: Chapter 26.16 RCW.

Escheats: Chapter 11.08 RCW.

"Net estate" defined: RCW 11.02.005(9).

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: Chapter 11.10 RCW.

Additional notes found at www.leg.wa.gov

11.04.035 Kindred of the half blood. Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his or her ancestors, or kindred of such ancestor’s blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance: PROVIDED, HOWEVER, That the words "kindred of such ancestor’s blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestors. [2010 c 8 § 2002; 1967 c 168 § 3; 1965 c 145 § 11.04.035. Formerly RCW 11.04.100, part.]

"Degree of kinship" defined: RCW 11.02.005(3).

11.04.041 Advancements. If a person dies intestate as to all his or her estate, property which he or she gave in his or her lifetime as an advancement to any person who, if the

intestate had died at the time of making the advancement, would be entitled to inherit a part of his or her estate, shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement. The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs. If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled had he or she survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he or she would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement. [2010 c 8 § 2003; 1965 c 145 § 11.04.041. Formerly RCW 11.04.040, 11.04.120, 11.04.130, 11.04.140, 11.04.150, 11.04.160, and 11.04.170.]

11.04.060 Tenancy in dower and by curtesy abolished. The provisions of RCW 11.04.015, as to the inheritance of the husband and wife from each other take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished. [1965 c 145 § 11.04.060. Prior: Code 1881 § 3304; 1875 p 55 § 3; RRS § 1343.]

11.04.071 Survivorship as incident of tenancy by the entireties abolished. The right of survivorship as an incident of tenancy by the entireties is abolished. [1965 c 145 § 11.04.071.]

Joint tenancy: Chapter 64.28 RCW.

Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death: RCW 11.02.130.

11.04.081 Inheritance by and from any child not dependent upon marriage of parents. For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married. [1975-'76 2nd ex.s. c 42 § 24; 1965 c 145 § 11.04.081. Formerly RCW 11.04.080 and 11.04.090.]

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes all lawfully adopted children: RCW 11.02.005(8).

11.04.085 Inheritance by adopted child. A lawfully adopted child shall not be considered an "heir" of his or her natural parents for purposes of this title. [2010 c 8 § 2004; 1965 c 145 § 11.04.085.]

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes lawfully adopted children: RCW 11.02.005(8).

11.04.095 Inheritance from stepparent avoids escheat. If a person dies leaving a surviving spouse or surviving domestic partner and issue by a former spouse or former domestic partner and leaving a will whereby all or substantially all of the deceased's property passes to the sur-

living spouse or surviving domestic partner or having before death conveyed all or substantially all his or her property to the surviving spouse or surviving domestic partner, and afterwards the latter dies without heirs and without disposing of his or her property by will so that except for this section the same would all escheat, the issue of the spouse or domestic partner first deceased who survive the spouse or domestic partner last deceased shall take and inherit from the spouse or domestic partner last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property; if such issue are all in the same degree of kinship to the spouse or domestic partner first deceased they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such spouse or such domestic partner first deceased. [2008 c 6 § 905; 1965 c 145 § 11.04.095. Prior: 1919 c 197 § 1; RCW 11.08.010; RRS § 1356-1.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.04.230 United States savings bond—Effect of death of co-owner. If either co-owner of United States savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.230. Prior: 1943 c 14 § 1; Rem. Supp. 1943 § 11548-60.]

11.04.240 United States savings bond—Effect of beneficiary's survival of registered owner. If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.240. Prior: 1943 c 14 § 2; Rem. Supp. 1943 § 11548-61.]

11.04.250 When real estate vests—Rights of heirs. When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his or her title shall vest immediately in his or her heirs or devisees, subject to his or her debts, family allowance, expenses of administration, and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: PROVIDED, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues, and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grant-

ees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues, and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative and those lawfully claiming under such personal representative. [2010 c 8 § 2005; 1965 c 145 § 11.04.250. Prior: 1895 c 105 § 1; RRS § 1366.]

Right to possession and management of estate: RCW 11.48.020.

11.04.290 Vesting of title. RCW 11.04.250 through 11.04.290 shall apply to community real property and also to separate estate; and upon the death of either spouse or either domestic partner, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in RCW 11.04.015, subject to all the charges mentioned in RCW 11.04.250. [2008 c 6 § 930; 1965 c 145 § 11.04.290. Prior: 1895 c 105 § 5; RRS § 1370.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Chapter 11.05A RCW UNIFORM SIMULTANEOUS DEATH ACT

Sections

11.05A.010	Definitions.
11.05A.020	Minimum survival requirement—Probate code.
11.05A.030	Minimum survival requirement—Governing instruments.
11.05A.040	Minimum survival requirement—Co-owners.
11.05A.050	Evidence of death or status.
11.05A.060	Exceptions.
11.05A.070	Liability.
11.05A.900	Application—Construction.
11.05A.901	Short title.
11.05A.902	Captions not law.
11.05A.903	Severability—2007 c 475.
11.05A.904	Application.

11.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entirety, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

(4) "POD" means pay on death.

(5) "TOD" means transfer on death. [2007 c 475 § 7.]

11.05A.020 Minimum survival requirement—Probate code. Except as provided in RCW 11.05A.060 and except for the purposes of the uniform TOD security registration act, if the title to property, the devolution of property, the

right to elect an interest in property, or the right to exempt property, homestead, or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty hours is deemed to have predeceased the other individual. This section does not apply if its application would result in a taking of intestate estate by the state. [2007 c 475 § 8.]

11.05A.030 Minimum survival requirement—Governing instruments. Except as provided in RCW 11.05A.060 and except for a security registered in beneficiary form (TOD) under the Uniform TOD Security Registration Act, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event. [2007 c 475 § 9.]

11.05A.040 Minimum survival requirement—Co-owners. Except as provided in RCW 11.05A.060, if (1) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours, and (2) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners. [2007 c 475 § 10.]

11.05A.050 Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead by the attending physician, county coroner, or county medical officer.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under this section who is absent for a continuous period of seven years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless

there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stipulated on a document described in subsection (2) or (3) of this section, a document described in subsection (2) or (3) of this section that stipulates a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours. [2007 c 475 § 11.]

11.05A.060 Exceptions. This chapter does not apply if:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period;

(3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under RCW 11.98.130 through 11.98.160; or

(4) The application of this chapter to multiple governing instruments would result in an unintended failure or duplication of a disposition. [2007 c 475 § 12.]

11.05A.070 Liability. (1) Protection of Payors and Other Third Parties.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

(b) Written notice of a claimed lack of entitlement under (a) of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the

payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(2) Protection of Bona Fide Purchasers—Personal Liability of Recipient.

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.

(b) If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted. [2007 c 475 § 13.]

11.05A.900 Application—Construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [2007 c 475 § 14.]

11.05A.901 Short title. This chapter may be cited as the uniform simultaneous death act. [2007 c 475 § 15.]

11.05A.902 Captions not law. Captions used in this chapter are not any part of the law. [2007 c 475 § 16.]

11.05A.903 Severability—2007 c 475. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 475 § 17.]

11.05A.904 Application. On July 22, 2007:

(1) An act done before July 22, 2007, in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 22, 2007, the provisions remain in force with respect to that right; and

(2) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 22, 2007, unless there is a clear indication of a contrary intent. [2007 c 475 § 18.]

Chapter 11.07 RCW
NONPROBATE ASSETS ON DISSOLUTION OR
INVALIDATION OF MARRIAGE

Sections

11.07.010 Nonprobate assets—Dissolution or invalidation of marriage or domestic partnership—Termination of domestic partnership.

11.07.010 Nonprobate assets—Dissolution or invalidation of marriage or domestic partnership—Termination of domestic partnership. (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry of a decree of dissolution of marriage or state registered domestic partnership or a declaration of invalidity or certification of termination of a state registered domestic partnership.

(2)(a) If a marriage or state registered domestic partnership is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution, declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage or domestic partnership, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage or domestic partnership do not exist at the decedent's death;

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other nonprobate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree, declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution, declaration of invalidity, or termination of state registered domestic partnership.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse or state registered domestic partner, whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing

disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor

of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse, former state registered domestic partner, or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death;

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with right of survivorship designations of a security, if such designations are authorized under Washington law;

(e) A transfer on death, pay on death, joint tenancy, or joint tenancy with right of survivorship brokerage account;

(f) Unless otherwise specifically provided therein, a contract wherein payment or performance under that contract is affected by the death of the person; or

(g) Unless otherwise specifically provided therein, any other written instrument of transfer, within the meaning of RCW 11.02.091(3), containing a provision for the nonprobate transfer of an asset at death.

For the general definition in this title of "nonprobate asset," see *RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a "bank account" includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993. [2008 c 6 § 906. Prior: 2007 c 475 § 2; 2007 c 156 § 13; 2002 c 18 § 1; 1998 c 292 § 118; 1997 c 252 § 2; 1994 c 221 § 2; 1993 c 236 § 1.]

***Reviser's note:** RCW 11.02.005 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15) to subsection (10), effective January 1, 2012.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Severability—2007 c 475: See RCW 11.05A.903.

Additional notes found at www.leg.wa.gov

Chapter 11.08 RCW ESCHEATS

Sections

11.08.101	Property of deceased inmates of state institutions—Disposition after two years.
11.08.111	Property of deceased inmates of state institutions—Disposition within two years.
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- 11.08.220 Certified copies of decree—Department of natural resources duties.
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- 11.08.240 Limitation on filing claim.
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- 11.08.260 Payment of escheated funds to claimant.
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- 11.08.290 Deposit of cash received by personal representative of escheat estate.
- 11.08.300 Transfer of property to department of revenue.

Action to recover property forfeited to state: RCW 7.56.120.

Banks, disposition of unclaimed personalty: RCW 30.44.150, 30.44.180 through 30.44.230.

Escheat of postal savings system accounts: Chapter 63.48 RCW.

Permanent common school fund, escheats as source of: RCW 28A.515.300.

Savings and loan associations, escheats: RCW 33.20.130, 33.40.110.

Social security benefits, payment to survivors or secretary of social and health services: RCW 11.66.010.

State land acquired by escheat, management: RCW 79.10.030.

Unclaimed estate, disposition: RCW 11.76.220.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.08.101 Property of deceased inmates of state institutions—Disposition after two years. Where, upon the expiration of two years after the death of any inmate of any state institution, there remains in the custody of the superintendent of such institution, money or property belonging to said deceased inmate, the superintendent shall forward such money to the state treasurer for deposit in the general fund of the state, and shall report such transfer and any remaining property to the department of corrections, which department shall cause the sale of such property and proceeds thereof shall be forwarded to the state treasurer for deposit in the general fund. [1981 c 136 § 58; 1979 c 141 § 10; 1965 c 145 § 11.08.101. Prior: 1951 c 138 § 1; prior: 1923 c 113 § 1; RRS § 1363-1.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

State institutions: Title 72 RCW.

Additional notes found at www.leg.wa.gov

11.08.111 Property of deceased inmates of state institutions—Disposition within two years. Prior to the expiration of the two-year period provided for in RCW 11.08.101, the superintendent may transfer such money or property in his or her possession, upon request and satisfactory proof submitted to him or her, to the following designated persons:

(1) To the personal representative of the estate of such deceased inmate; or

(2) To the successor or successors defined in RCW 11.62.005, where such money and property does not exceed the amount specified in RCW 6.13.030, and the successor or successors shall have furnished proof of death and an affidavit made by said successor or successors meeting the requirements of RCW 11.62.010; or

(3) In the case of money, to the person who may have deposited such money with the superintendent for the use of the decedent, where the sum involved does not exceed one thousand dollars; or

(4) To the department of social and health services, when there are moneys due and owing from such deceased person's

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estate for the cost of his or her care and maintenance at a state institution: PROVIDED, That transfer of such money or property may be made to the person first qualifying under this section and such transfer shall exonerate the superintendent from further responsibility relative to such money or property: AND PROVIDED FURTHER, That upon satisfactory showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to one thousand dollars from said deceased inmate's funds on said obligation. [2010 c 8 § 2006; 1990 c 225 § 2; 1973 1st ex.s. c 76 § 1; 1965 c 145 § 11.08.111. Prior: 1959 c 240 § 1; 1951 c 138 § 2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

11.08.120 Property of deceased inmates of state institutions—Sale—Disposition of proceeds. The property, other than money, of such deceased inmate remaining in the custody of a superintendent of a state institution after the expiration of the above two-year period may be forwarded to the department of corrections at its request and may be appraised and sold at public auction to the highest bidder in the manner and form as provided for public sales of personal property, and all moneys realized upon such sale, after deducting the expenses thereof, shall be paid into the general fund of the state treasury. [1981 c 136 § 59; 1979 c 141 § 11; 1965 c 145 § 11.08.120. Prior: 1951 c 138 § 3; prior: 1923 c 113 § 2; RRS § 1363-2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

Additional notes found at www.leg.wa.gov

11.08.140 Escheat for want of heirs. Whenever any person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state and without being survived by any person entitled to the same under the laws of this state, such property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280. [1965 c 145 § 11.08.140. Prior: 1955 c 254 § 2.]

11.08.150 Title to property vests in state at death of owner. Title to escheat property, which shall include any intangible personalty, shall vest in the state at the death of the owner thereof. [1965 c 145 § 11.08.150. Prior: 1955 c 254 § 3.]

11.08.160 Department of revenue—Jurisdiction—Duties. The department of revenue of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings, including any proceeding under chapter 11.62 RCW, deemed necessary or proper in the handling of such property, and it shall be the duty of the department of revenue to protect and conserve escheat property for the benefit of the permanent common school fund of the state until such property or the proceeds thereof have been forwarded to the state treasurer or the department of natural resources as hereinafter provided. [1988 c 128 § 1; 1988 c 64 § 23; 1975 1st ex.s. c 278 § 1; 1965 c 145 § 11.08.160. Prior: 1955 c 254 § 4.]

Reviser's note: This section was amended by 1988 c 64 § 23 and by 1988 c 128 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

11.08.170 Probate of escheat property—Notice to department of revenue. Escheat property may be probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by special administration or otherwise, the petitioner shall promptly notify the department of revenue in writing thereof on forms furnished by the department of revenue to the county clerks. Thereafter, the department of revenue shall be served with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Like notice shall be given of the presentation of any claims to the court for allowance. Failure to furnish such notice shall be deemed jurisdictional and any order of the court entered without such notice shall be void. The department of revenue may waive the provisions of this section in its discretion. The department shall be deemed to have waived its right to administer in such probate proceedings under RCW 11.28.120(5) unless application for appointment of the director or the director's designee is made within forty days immediately following receipt of notice of institution of proceedings. [1994 c 221 § 3; 1990 c 225 § 1; 1975 1st ex.s. c 278 § 2; 1965 c 145 § 11.08.170. Prior: 1955 c 254 § 5.]

Additional notes found at www.leg.wa.gov

11.08.180 Department of revenue to be furnished copies of documents and pleadings. The department of revenue may demand copies of any papers, documents, or pleadings involving the escheat property or the probate thereof deemed by it to be necessary for the enforcement of RCW 11.08.140 through 11.08.280 and it shall be the duty of the administrator or his or her attorney to furnish such copies to the department. [2010 c 8 § 2007; 1975 1st ex.s. c 278 § 3; 1965 c 145 § 11.08.180. Prior: 1955 c 254 § 6.]

Additional notes found at www.leg.wa.gov

11.08.185 Escheat property—Records of department of revenue—Public record information. All records of the department of revenue relating to escheated property or property about to escheat shall be a public record and shall be made available by the department of revenue for public inspection. Without limitation, the records to be made public shall include all available information regarding possible heirs, descriptions and amounts of property escheated or about to escheat, and any information which might serve to identify the proper heirs. [1973 c 25 § 1.]

11.08.200 Liability for use of escheated property. If any person shall take possession of escheat property without proper authorization to do so, and shall have the use thereof for a period exceeding sixty days, he or she shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the department of revenue or by the administrator of the estate. [2010 c 8 § 2008; 1975 1st ex.s. c 278 § 4; 1965 c 145 § 11.08.200. Prior: 1955 c 254 § 8.]

Additional notes found at www.leg.wa.gov

11.08.205 Lease, sublease, or rental of escheated real property—Authorized—Expenses—Distribution of proceeds. (1) The department of natural resources shall have the authority to lease real property from the administrator of an estate being probated under the escheat provisions, RCW 11.08.140 to 11.08.280.

(2) The department of natural resources shall have the authority to sublease or rent the real property, if it has leased under subsection (1) of this section, during the period that the real property is under the authority of the court appointed administrator.

(3) Any moneys gained by the department of natural resources from leases or rentals shall be credited to an escheat reserve account bearing the name of the estate.

(4) The department of natural resources shall have the authority to expend moneys to preserve and maintain the real property during the probate period.

(5) Any expenses by the department of natural resources in preserving or maintaining the real property may be paid as follows:

(a) First, the expenses shall be charged to the escheat reserve account bearing the name of the estate; and

(b) Second, if the expenses exceed the escheat reserve account, then the expenses shall be paid as follows:

(i) If the land is distributed to the state by the administrator, the expenses shall be paid out of the sale price of the land as later sold by the department of natural resources, or shall be paid out of the general fund if the land is held for use by the state; or

(ii) If the land is distributed to the heirs by the administrator, the expenses shall be borne by the estate.

(6) Upon the final distribution of the real property, the escheat reserve account shall be closed out as follows:

(a) If the real property is distributed to the state, the balance of the account shall be paid into the permanent common school fund of the state; or

(b) If the real property is distributed to the heirs, the balance of the account shall be paid to the estate. [1969 ex.s. c 249 § 1.]

11.08.210 Allowance of claims, expenses, partial fees—Sale of property—Decree of distribution. If at the expiration of four months from the date of the first publication of notice to creditors no heirs have appeared and established their claim to the estate, the court may enter an interim order allowing claims, expenses, and partial fees. If at the expiration of ten months from the date of issuance of letters testamentary or of administration no heirs have appeared and established their claim to the estate, all personal property not in the form of cash shall be sold under order of the court. Personal property found by the court to be worthless shall be ordered abandoned. Real property shall not be sold for the satisfaction of liens thereon, or for the payment of the debts of decedent or expenses of administration until the proceeds of the personal property are first exhausted. The court shall then enter a decree allowing any additional fees and charges deemed proper and distributing the balance of the cash on hand, together with any real property, to the state. Remittance of cash on hand shall be made to the department of revenue which shall make proper records thereof and forthwith forward such funds to the state treasurer for deposit in the per-

manent common school fund of the state. [1979 ex.s. c 209 § 19; 1975 1st ex.s. c 278 § 5; 1965 c 145 § 11.08.210. Prior: 1955 c 254 § 9.]

Additional notes found at www.leg.wa.gov

11.08.220 Certified copies of decree—Department of natural resources duties. The department of revenue shall be furnished two certified copies of the decree of the court distributing any real property to the state, one of which shall be forwarded to the department of natural resources which shall thereupon assume supervision of and jurisdiction over such real property and thereafter handle it the same as state common school lands. The administrator shall also file a certified copy of the decree with the auditor of any county in which the escheated real property is situated. [1988 c 128 § 2; 1975 1st ex.s. c 278 § 6; 1965 c 145 § 11.08.220. Prior: 1957 c 125 § 1; 1955 c 254 § 10.]

Management of acquired lands by department of natural resources: RCW 79.10.030.

Additional notes found at www.leg.wa.gov

11.08.230 Appearance and claim of heirs—Notices to department of revenue. Upon the appearance of heirs and the establishment of their claim to the satisfaction of the court prior to entry of the decree of distribution to the estate, the provisions of RCW 11.08.140 through 11.08.280 shall not further apply, except for purposes of appeal: PROVIDED, That the department of revenue shall be promptly given written notice of such appearance by the claimants and furnished copies of all papers or documents on which such claim of heirship is based. Any documents in a foreign language shall be accompanied by translations made by a properly qualified translator, certified by him or her to be true and correct translations of the original documents. The administrator or his or her attorney shall also furnish the department of revenue with any other available information bearing on the validity of the claim. [2010 c 8 § 2009; 1975 1st ex.s. c 278 § 7; 1965 c 145 § 11.08.230. Prior: 1955 c 254 § 11.]

Additional notes found at www.leg.wa.gov

11.08.240 Limitation on filing claim. Any claimant to escheated funds or real property shall have seven years from the date of issuance of letters testamentary or of administration within which to file his or her claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the department of revenue, together with twenty days notice of the hearing thereon. [2010 c 8 § 2010; 1975 1st ex.s. c 278 § 8; 1965 c 145 § 11.08.240. Prior: 1955 c 254 § 12.]

Additional notes found at www.leg.wa.gov

11.08.250 Order of court on establishment of claim—Park lands—Appraisal. Upon establishment of the claim to the satisfaction of the court, it shall order payment to the claimant of any escheated funds and delivery of any escheated land, or the proceeds thereof, if sold. If, however, the escheated property shall have been transferred to the state parks and recreation commission or local jurisdiction for park purposes, the court shall order payment to the claimant for the fair market value of the property at the time of transfer, excluding the value of physical improvements to the property

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while managed by a state agency or local jurisdiction. The value shall be established by independent appraisal obtained by the department of revenue. [1993 c 49 § 2; 1965 c 145 § 11.08.250. Prior: 1955 c 254 § 13.]

Park land: RCW 79.10.030.

11.08.260 Payment of escheated funds to claimant. In the event the order of the court requires the payment of escheated funds or the proceeds of the sale of escheated real property or the appraised value of escheated property transferred for park purposes, a certified copy of such order shall be served upon the department of revenue which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state. [1993 c 49 § 3; 1975 1st ex.s. c 278 § 9; 1965 c 145 § 11.08.260. Prior: 1955 c 254 § 14.]

Additional notes found at www.leg.wa.gov

11.08.270 Conveyance of escheated property to claimant. In the event the order of the court requires the delivery of real property to the claimant, a certified copy of such order shall be served upon the department of natural resources which shall thereupon make proper certification to the office of the governor for issuance of a quitclaim deed for the property to the claimant. [1988 c 128 § 3; 1965 c 145 § 11.08.270. Prior: 1955 c 254 § 15.]

11.08.280 Limitation when claimant is minor or incompetent not under guardianship. The claims of any persons to escheated funds or real property which are not filed within seven years as specified above are forever barred, excepting as to those persons who are minors or who are legally incompetent and not under guardianship, in which event the claim may be filed within seven years after their disability is removed. [1965 c 145 § 11.08.280. Prior: 1955 c 254 § 16.]

11.08.290 Deposit of cash received by personal representative of escheat estate. All cash received by the personal representative of an escheat estate shall be immediately deposited at interest for the benefit of the estate in a federally insured time or savings deposit or share account, except that the personal representative may maintain an amount not to exceed two hundred fifty dollars in a checking account. This arrangement may be changed by appropriate court order. [1979 ex.s. c 209 § 18.]

Additional notes found at www.leg.wa.gov

11.08.300 Transfer of property to department of revenue. Escheat property may be transferred to the department of revenue under the provisions of RCW 11.62.005 through 11.62.020. The department of revenue shall furnish proof of death and an affidavit made by the department which meets the requirements of RCW 11.62.010 to any person who is indebted to or has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse or surviving domestic partner as a community, which debt or personal property is an asset which is subject to probate. Upon receipt of such proof of death and affidavit, the person shall pay the indebtedness or deliver the per-

sonal property, or as much of either as is claimed, to the department of revenue pursuant to RCW 11.62.010.

The department of revenue shall file a copy of its affidavit made pursuant to chapter 11.62 RCW with the clerk of the court where any probate administration of the decedent has been commenced, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as a place for probate administration of the estate of such person. The affidavit shall be indexed under the name of the decedent in the probate index upon payment of a fee of two dollars. Any claimant to escheated funds shall have seven years from the filing of the affidavit by the department of revenue within which to file the claim. The claim shall be filed with the clerk of the court where the affidavit of the department of revenue was filed, and a copy served upon the department of revenue, together with twenty days notice of a hearing to be held thereon, and the provisions of RCW 11.08.250 through 11.08.280 shall apply. [2008 c 6 § 907; 1990 c 225 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Chapter 11.10 RCW ABATEMENT OF ASSETS

Sections

11.10.010	Abatement—Generally.
11.10.020	Gift from mixed separate and community property.
11.10.030	Allocation of separate and community assets.
11.10.040	Nonprobate assets.
11.10.900	Application of chapter.

11.10.010 Abatement—Generally. (1) Except as provided in subsection (2) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

- (a) Intestate property;
- (b) Residuary gifts;
- (c) General gifts;
- (d) Specific gifts.

For purposes of abatement a demonstrative gift, defined as a general gift charged on any specific property or fund, is deemed a specific gift to the extent of the value of the property or fund on which it is charged, and a general gift to the extent of a failure or insufficiency of that property or fund. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, a gift abates as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred gift is sold, diminished, or exhausted incident to administration, not including satisfaction of debts or liabilities according to their community or separate status under RCW 11.10.030, abatement must be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(4) To the extent that the whole of the community property is subject to abatement, the shares of the decedent and of

the surviving spouse or surviving domestic partner in the community property abate equally.

(5) If required under RCW 11.10.040, nonprobate assets must abate with those disposed of under the will and passing by intestacy. [2008 c 6 § 908; 1994 c 221 § 5.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.10.020 Gift from mixed separate and community property. To the extent that a gift is to be satisfied out of a source that consists of both separate and community property, unless otherwise indicated in the will it is presumed to be a gift from separate and community property in proportion to their relative value in the property or fund from which the gift is to be satisfied. [1994 c 221 § 6.]

Additional notes found at www.leg.wa.gov

11.10.030 Allocation of separate and community assets. (1) A community debt or liability is charged against the entire community property, with the surviving spouse's or surviving domestic partner's half and the decedent spouse's or decedent domestic partner's half charged equally.

(2) A separate debt or liability is charged first against separate property, and if that is insufficient against the balance of decedent's half of community property remaining after community debts and liabilities are satisfied.

(3) A community debt or liability that is also the separate debt or liability of the decedent is charged first against the whole of the community property and then against the decedent's separate property.

(4) An expense of administration is charged against the separate property and the decedent's half of the community property in proportion to the relative value of the property, unless a different charging of expenses is shown to be appropriate under the circumstances including against the surviving spouse's or surviving domestic partner's share of the community property.

(5) Property of a similar type, community or separate, is appropriated in accordance with the abatement priorities of RCW 11.10.010.

(6) Property that is primarily chargeable for a debt or liability is exhausted, in accordance with the abatement priorities of RCW 11.10.010, before resort is had, also in accordance with RCW 11.10.010, to property that is secondarily chargeable. [2008 c 6 § 931; 1994 c 221 § 7.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.10.040 Nonprobate assets. (1) If abatement is necessary among takers of a nonprobate asset, the court shall adopt the abatement order and limitations set out in RCW 11.10.010, 11.10.020, and 11.10.030, assigning categories in accordance with subsection (2) of this section.

(2) A nonprobate transfer must be categorized for purposes of abatement, within the list of priorities set out in RCW 11.10.010(1), as follows:

(a) All nonprobate forms of transfer under which an identifiable nonprobate asset passes to a beneficiary or beneficiaries on the event of the decedent's death, such as, but not

limited to, joint tenancies and payable-on-death accounts, are categorized as specific bequests.

(b) With respect to all other interests passing under nonprobate forms of transfer, each must be categorized in the manner that is most closely comparable to the nature of the transfer of that interest.

(3) If and to the extent that a nonprobate asset is subject to the same obligations as are assets disposed of under the decedent's will, the nonprobate assets abate ratably with the probate assets, within the categories set out in subsection (2) of this section.

(4) If the nonprobate instrument of transfer or the decedent's will expresses a different order of abatement, or if the decedent's overall dispositive plan or the express or implied purpose of the transfer would be defeated by the order of abatement stated in subsections (1) through (3) of this section, the nonprobate assets abate as may be found necessary to give effect to the intention of the decedent. [1994 c 221 § 8.]

Additional notes found at www.leg.wa.gov

11.10.900 Application of chapter. This chapter applies in all instances in which no other abatement scheme is expressly provided. [1994 c 221 § 4.]

Additional notes found at www.leg.wa.gov

**Chapter 11.11 RCW
TESTAMENTARY DISPOSITION OF
NONPROBATE ASSETS ACT**

Sections

11.11.003	Purposes.
11.11.005	Construction.
11.11.007	Intent—Controversies between beneficiaries and testamentary beneficiaries.
11.11.010	Definitions.
11.11.020	Disposition of nonprobate assets under will.
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11.11.050	Notice—Affidavit—Form—Limitation on liability for failure to provide notice.
11.11.060	Vesting of rights and powers under chapter.
11.11.070	Ownership rights as between individuals preserved—Testamentary beneficiary may recover nonprobate asset from beneficiary—Limitation on action to recover.
11.11.080	Nonprobate assets not property of estate—Effect of notice on administration—Effect of preceding death of devisee or legatee.
11.11.090	Transfer of nonprobate asset to testamentary beneficiary.
11.11.100	Authority to withhold transfer—Notice—Expenses of obtaining consent, authorization, direction.
11.11.110	Adverse claim bond.
11.11.900	Short title.
11.11.901	Application of chapter.
11.11.902	Part headings and section captions not law—1998 c 292.
11.11.903	Effective dates—1998 c 292.

11.11.003 Purposes. The purposes of this chapter are to:

(1) Enhance and facilitate the power of testators to control the disposition of assets that pass outside their wills;

(2) Provide simple procedures for resolution of disputes regarding entitlement to such assets; and

(3) Protect any financial institution or other third party having possession of or control over such an asset and transferring it to a beneficiary duly designated by the testator,

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unless that third party has been provided notice of a testamentary disposition as required in this chapter. [1998 c 292 § 102.]

11.11.005 Construction. (1) When construing sections and provisions of this chapter, the sections and provisions must:

(a) Be liberally construed and applied to promote the purposes of this chapter;

(b) Be considered part of a general act that is intended as unified coverage of the subject matter, and no part of this chapter may be deemed impliedly repealed by subsequent legislation if the construction can be reasonably avoided;

(c) Not be held invalid because of the invalidity of other sections or provisions of this chapter as long as the section or provision in question can be given effect without regard to the invalid section or provision, and to this end the sections or provisions of this chapter are severable;

(d) Not be construed by reference to section or subsection headings as used in this chapter, since these do not constitute any part of the law;

(e) Not be deemed to alter the community or separate property nature of any asset passing outside a testator's will or any individual's community or separate rights to the asset, and a testator's community or separate property rights to the asset are not affected by whether it passes outside the will or, under this chapter, by disposition under the will; and

(f) Not be construed as authorizing or extending the authority of any financial institution or other third party to sell or otherwise create assets that would pass outside a testator's will upon such terms as would contravene any other applicable federal or state law.

(2) The sections and provisions of this chapter apply to an owner who dies while a resident of this state on or after July 1, 1999, and to a nonprobate asset the disposition of which on the death of the owner would otherwise be governed by the law of this state. [1998 c 292 § 103.]

11.11.007 Intent—Controversies between beneficiaries and testamentary beneficiaries. This chapter is intended to establish ownership rights to nonprobate assets upon the death of the owner, as between beneficiaries and testamentary beneficiaries. This chapter is relevant only as to controversies between these persons, and has no bearing on the right of a person to transfer a nonprobate asset under its terms in the absence of a testamentary provision under this chapter. [1998 c 292 § 107.]

11.11.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Actual knowledge" means:

(i) For a financial institution, whether acting as personal representative or otherwise, or other third party in possession or control of a nonprobate asset, receipt of written notice that: (A) Complies with RCW 11.11.050; (B) pertains to the testamentary disposition or ownership of a nonprobate asset in its possession or control; and (C) is received by the financial institution or third party after the death of the owner in a time sufficient to afford the financial institution or third party a reasonable opportunity to act upon the knowledge; and

(ii) For a personal representative that is not a financial institution, personal knowledge or possession of documents relating to the testamentary disposition or ownership of a nonprobate asset of the owner sufficient to afford the personal representative reasonable opportunity to act upon the knowledge, including reasonable opportunity for the personal representative to provide the written notice under RCW 11.11.050.

(b) For the purposes of (a) of this subsection, notice of more than thirty days is presumed to be notice that is sufficient to afford the party a reasonable opportunity to act upon the knowledge, but notice of less than five business days is presumed not to be a sufficient notice for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(2) "Beneficiary" means the person designated to receive a nonprobate asset upon the death of the owner by means other than the owner's will.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws.

(4) "Date of will" means, as to any nonprobate asset, the date of signature of the will or codicil that refers to the asset and disposes of it.

(5) "Designate" means a written means by which the owner selects a beneficiary, including but not limited to instruments under contractual arrangements and registration of accounts, and "designation" means the selection.

(6) "Financial institution" means: A bank, trust company, mutual savings bank, savings and loan association, credit union, broker, or issuer of stock or its transfer agent.

(7)(a) "Nonprobate asset" means a nonprobate asset within the meaning of RCW 11.02.005, but excluding the following:

(i) A right or interest in real property passing under a joint tenancy with right of survivorship;

(ii) A deed or conveyance for which possession has been postponed until the death of the owner;

(iii) A right or interest passing under a community property agreement; and

(iv) An individual retirement account or bond.

(b) For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse or former domestic partner upon dissolution of marriage or state registered domestic partnership or declaration of invalidity of marriage or state registered domestic partnership, see RCW 11.07.010(5).

(8) "Owner" means a person who, during life, has beneficial ownership of the nonprobate asset.

(9) "Request" means a request by the beneficiary for transfer of a nonprobate asset after the death of the owner, if it complies with all conditions of the arrangement, including reasonable special requirements concerning necessary signatures and regulations of the financial institution or other third party, or by the personal representative of the owner's estate or the testamentary beneficiary, if it complies with the owner's will and any additional conditions of the financial institution or third party for such transfer.

(10) "Testamentary beneficiary" means a person named under the owner's will to receive a nonprobate asset under this chapter, including but not limited to the trustee of a testamentary trust.

(11) "Third party" means a person, including a financial institution, having possession of or control over a nonprobate asset at the death of the owner, including the trustee of a revocable living trust and surviving joint tenant or tenants. [2008 c 6 § 909; 1998 c 292 § 104.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.11.020 Disposition of nonprobate assets under will. (1) Subject to community property rights, upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will.

(2) A general residuary gift in an owner's will, or a will making general disposition of all of the owner's property, does not entitle the devisees or legatees to receive nonprobate assets of the owner.

(3) A disposition in a will of the owner's interest in "all nonprobate assets" or of all of a category of nonprobate asset under RCW 11.11.010(7), such as "all of my payable on death bank accounts" or similar language, is deemed to be a disposition of all the nonprobate assets the beneficiaries of which are designated before the date of the will.

(4) If the owner designates a beneficiary for a nonprobate asset after the date of the will, the specific provisions in the will that attempt to control the disposition of that asset do not govern the disposition of that nonprobate asset, even if the subsequent beneficiary designation is later revoked. If the owner revokes the later beneficiary designation, and there is no other provision controlling the disposition of the asset, the asset shall be treated as any other general asset of the owner's estate, subject to disposition under the other applicable provisions of the will. A beneficiary designation with respect to an asset that renews without the signature of the owner is deemed to have been made on the date on which the account was first opened. [2006 c 203 § 1; 1998 c 292 § 105.]

11.11.030 Waiver of right to dispose of a nonprobate asset under will—Revocation of waiver. An owner may waive the right to dispose of a specific nonprobate asset by will under this chapter, with or without consideration, by a written instrument signed by the owner and delivered to the financial institution or other third party, including but not limited to signature cards or deposit agreements. The waiver is revocable by written instrument delivered to the financial institution or other third party unless the owner has stated that the waiver is to be irrevocable. [1998 c 292 § 106.]

11.11.040 Right to rely on form of nonprobate asset—Discharge of financial institution or other third party. In transferring nonprobate assets, a personal representative, a financial institution, or other third party may rely conclusively and entirely upon the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, and a personal representative or third party may rely on information provided by a financial institution or other party who has possession or control of a nonprobate asset concerning the form of the nonprobate asset and the terms of the nonprobate asset arrange-

ment in effect on the date of death of the owner, unless the personal representative, financial institution, or other third party has actual knowledge of the existence of a claim by a testamentary beneficiary. A financial institution or other third party is not required to inquire as to either the source or ownership of any nonprobate asset in its possession or under its control, or as to the proposed application of an asset so transferred. A transfer of a nonprobate asset in accordance with this section constitutes a complete release and discharge of the financial institution or other third party from all claims relating to the nonprobate asset, regardless of whether or not the transfer is consistent with the actual ownership of the nonprobate asset. [2006 c 203 § 2; 1998 c 292 § 108.]

11.11.050 Notice—Affidavit—Form—Limitation on liability for failure to provide notice. (1) Written notice under this chapter must be served personally or by certified mail, return receipt requested and postage prepaid, on the financial institution or other third party having the nonprobate asset in its possession or control, on the beneficiary, on the testamentary beneficiary, and on the personal representative, and proof of the mailing or service must be made by affidavit and filed under the cause number assigned to the owner’s estate. Notice to a financial institution must include notice delivered as follows:

- (a) If the nonprobate asset was maintained at a specific office of the financial institution, notice must be delivered to the office at which the nonprobate asset was maintained, which notice must be directed to the manager of the office;
- (b) If the nonprobate asset was held in a trust administered by a financial institution, notice must be delivered to the office at which the trust was administered, which notice must be directed to a named officer responsible for the administration of the trust; and
- (c) In all cases, notice must be delivered to any other location and in any other manner specifically designated in a written agreement signed by the owner and the financial institution, including but not limited to a signature card or deposit agreement.

(2) Written notice to a financial institution or other third party of the testamentary disposition of a nonprobate asset under this chapter must be in a form substantially similar to the following:

NOTICE OF TESTAMENTARY DISPOSITION OF NONPROBATE ASSET

The undersigned personal representative, petitioner for appointment as personal representative, attorney for the personal representative or petitioner, or testamentary beneficiary under the will of the decedent named above (as that term is defined in RCW 11.11.010) hereby notifies you that the decedent named above died on (DATE MUST BE SUPPLIED) and left a will dated (DATE OF WILL MUST BE SUPPLIED) disposing of the following nonprobate asset or assets in your possession or control:

(EACH SUCH ASSET MUST BE DESCRIBED WITH REASONABLE SPECIFICITY. FOR ACCOUNTS AT FINANCIAL INSTITUTIONS,

THE WRITTEN NOTICE MUST SPECIFY THE OFFICE AT WHICH THE ACCOUNT WAS MAINTAINED, THE NAME OR NAMES IN WHICH THE ACCOUNT WAS HELD, AND THE FULL ACCOUNT NUMBER. FOR ASSETS HELD IN TRUST, THE WRITTEN NOTICE MUST SPECIFY THE NAME OR NAMES OF THE GRANTOR, THE NAME OF THE TRUST, IF ANY, AND THE DATE OF THE TRUST INSTRUMENT.)

Under chapter 11.11 RCW, you may not transfer, deliver, or otherwise dispose of the asset or assets listed above in accordance with the beneficiary designation, account registration, or other arrangement made with you by the decedent. You may transfer, deliver, or otherwise dispose of the asset or assets listed above only upon receipt of the written direction of the personal representative or of the testamentary beneficiary, if the personal representative consents.

.....
.....
(CAPACITY OF SIGNER)

(3) The personal representative of the estate of the owner, a petitioner for appointment as personal representative, or the testamentary beneficiary may provide written notice under this section. The personal representative has no duty to provide written notice under this section and has no liability for failing or refusing to give the notice.

(4) Written notice under this section may be provided at any time after the death of the owner and before discharge of the personal representative on closing of the estate, and may be provided before admission to probate of the will. [1998 c 292 § 109.]

11.11.060 Vesting of rights and powers under chapter. The right to provide notice under RCW 11.11.050 and the entitlement of the testamentary beneficiary to the nonprobate asset vest immediately upon death of the owner. The power of the personal representative to direct the financial institution or other third party having the nonprobate asset in its possession or under its control to transfer or otherwise dispose of the asset arises upon the later of appointment of the personal representative or admission of the will to probate. [1998 c 292 § 110.]

11.11.070 Ownership rights as between individuals preserved—Testamentary beneficiary may recover nonprobate asset from beneficiary—Limitation on action to recover. (1) The protection accorded to financial institutions and other third parties under RCW 11.11.040 has no bearing on the actual rights of ownership to nonprobate assets as between beneficiaries and testamentary beneficiaries, and their heirs, successors, personal representatives, and assigns.

(2) A testamentary beneficiary entitled to a nonprobate asset otherwise transferred to a beneficiary not so entitled, and a personal representative of the owner’s estate on behalf of the testamentary beneficiary, may petition the superior court having jurisdiction over the owner’s estate for an order

declaring that the testamentary beneficiary is so entitled, the hearing of the petition to be held in accordance with *chapter 11.96 RCW.

(3) A testamentary beneficiary claiming a nonprobate asset who has not filed such a petition within the earlier of: (a) Six months from the date of admission of the will to probate; and (b) one year from the date of the owner's death, shall be forever barred from making such a claim or commencing such an action. [1998 c 292 § 111.]

*Reviser's note: Chapter 11.96 RCW was repealed by 1999 c 42 § 637, effective January 1, 2000.

11.11.080 Nonprobate assets not property of estate—Effect of notice on administration—Effect of preceding death of devisee or legatee. (1) Notwithstanding any provision of this chapter, a nonprobate asset disposed of under the owner's will may not be treated as a part of the owner's probate estate for any other purpose under this title, unless:

(a) The nonprobate asset is subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200; or

(b) Any section of this title directs otherwise, by specifically referring to this section.

(2) Provision of notice under this chapter has no effect on the administration of other assets of the estate of the owner. The personal representative has no duty to administer upon a nonprobate asset because of providing the notice, unless specifically required by this chapter or under RCW 11.18.200.

(3) RCW 11.12.110, regarding death of a devisee or legatee before the testator, does not apply to disposition of a nonprobate asset under a will. [1998 c 292 § 112.]

11.11.090 Transfer of nonprobate asset to testamentary beneficiary. (1) A financial institution's or third party's obligation to transfer a nonprobate asset to a testamentary beneficiary arises only after it has actual knowledge of the claim of the testamentary beneficiary, and after receiving written direction from the personal representative of the owner's estate, or if the personal representative consents in writing, from the testamentary beneficiary, to make the transfer. The financial institution may also require that its customary procedures be followed in effectuating a transfer of the nonprobate asset.

(2) Subject to subsection (1) of this section, financial institutions and other third parties may transfer a nonprobate asset that has not already been distributed to the testamentary beneficiary entitled to the nonprobate asset under the owner's will, subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200. [1998 c 292 § 113.]

11.11.100 Authority to withhold transfer—Notice—Expenses of obtaining consent, authorization, direction. (1) This chapter does not require any financial institution or other third party to transfer a nonprobate asset to a beneficiary, testamentary beneficiary, or other person claiming an interest in the nonprobate asset if the financial institution or third party has actual knowledge of the existence of a dispute between beneficiaries, testamentary beneficiaries, or other persons concerning rights or ownership to the nonprobate

asset under this chapter, or if the financial institution or third party is otherwise uncertain as to who is entitled to receive the nonprobate asset under this chapter. In any such case, the financial institution or third party may, without liability, notify in writing all beneficiaries, testamentary beneficiaries, or other persons claiming an interest in the nonprobate asset of either its uncertainty as to who is entitled to transfer of the nonprobate asset or the existence of any dispute, and it may also, without liability, refuse to transfer a nonprobate asset to a beneficiary or a testamentary beneficiary until such time as either:

(a) All the beneficiaries, testamentary beneficiaries, and other interested persons have consented in writing to the transfer; or

(b) The transfer is authorized or directed by a court of proper jurisdiction.

(2) The expense of obtaining the written consent or court authorization or direction may, by order of the court, be paid by the personal representative as an expense of administration. [1998 c 292 § 114.]

11.11.110 Adverse claim bond. Notwithstanding RCW 11.11.100, a financial institution or other third party having actual knowledge of the existence of a dispute between beneficiaries, a testamentary beneficiary, or other persons concerning rights to a nonprobate asset under this chapter may condition transfer of the nonprobate asset on execution, in form and with security acceptable to the financial institution or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset on the date of the owner's death or the amount of any adverse claim, whichever is the lesser, indemnifying the financial institution or other third party from any and all liability, loss, damage, costs, and expenses, for and on account of transfer of the nonprobate asset. [1998 c 292 § 115.]

11.11.900 Short title. This chapter may be known and cited as the testamentary disposition of nonprobate assets act. [1998 c 292 § 101.]

11.11.901 Application of chapter. This chapter applies to any will of an owner who dies while a resident of this state on or after July 1, 1999, regardless of whether the will was executed or republished before or after July 1, 1999, and regardless of whether the beneficiary of the nonprobate asset was designated before or after July 1, 1999. [1998 c 292 § 116.]

11.11.902 Part headings and section captions not law—1998 c 292. Part headings and section captions used in this act are not any part of the law. [1998 c 292 § 601.]

11.11.903 Effective dates—1998 c 292. (1) Sections 101 through 116 and 118 of this act take effect July 1, 1999.

(2) Sections 117, 201 through 205, 301, 401, 501 through 507, and 604 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 1998]. [1998 c 292 § 603.]

**Chapter 11.12 RCW
WILLS**

Sections

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11.12.010 Who may make a will. Any person of sound mind who has attained the age of eighteen years may, by last will, devise all his or her estate, both real and personal.

All wills executed subsequent to September 16, 1940, and which meet the requirements of this section are hereby validated and shall have all the force and effect of wills executed subsequent to the taking effect of this section. [1970 ex.s. c 17 § 3; 1965 c 145 § 11.12.010. Prior: 1943 c 193 § 1; 1917 c 156 § 24; Rem. Supp. 1943 § 1394; prior: Code 1881 § 1318; 1863 p 207 § 51; 1860 p 169 § 18.]

11.12.020 Requisites of wills—Foreign wills. (1) Every will shall be in writing signed by the testator or by some other person under the testator's direction in the testator's presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will, or by signing an affidavit that complies with RCW 11.20.020(2), while in the presence of the testator and at the testator's direction or request: PROVIDED, That a last will and testament, executed in the mode prescribed by the law of the place where executed or of the testator's domicile, either at the time of the will's execution or at the time of the testator's death, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state.

(2) This section shall be applied to all wills, whenever executed, including those subject to pending probate proceedings. [1990 c 79 § 1; 1965 c 145 § 11.12.020. Prior: 1929 c 21 § 1; 1917 c 156 § 25; RRS § 1395; prior: Code 1881 § 1319; 1863 p 207 §§ 53, 54; 1860 p 170 §§ 20, 21. FORMER PART OF SECTION; re nuncupative wills, now codified as RCW 11.12.025.]

11.12.025 Nuncupative wills. Nothing contained in this chapter shall prevent any member of the armed forces of the United States or person employed on a vessel of the

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United States merchant marine from disposing of his wages or personal property, or prevent any person competent to make a will from disposing of his or her personal property of the value of not to exceed one thousand dollars, by nuncupative will if the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and that such nuncupative will was made at the time of the last sickness of the testator, but no proof of any nuncupative will shall be received unless it be offered within six months after the speaking of the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation be issued to the widow and/or heirs at law of the deceased that they may contest the will, and no real estate shall be devised by a nuncupative will. [1965 c 145 § 11.12.025. Formerly RCW 11.12.020, part.]

11.12.030 Signature of testator at his or her direction—Signature by mark. Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his or her own name to such will and state that he or she subscribed the testator's name at his or her request: PROVIDED, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his or her request by making his or her mark on the will. [2010 c 8 § 2011; 1965 c 145 § 11.12.030. Prior: 1927 c 91 § 1; 1917 c 156 § 27; RRS § 1397; prior: Code 1881 § 1320; 1863 p 207 § 54; 1860 p 170 § 21.]

11.12.040 Revocation of will—How effected—Effect on codicils. (1) A will, or any part thereof, can be revoked:

(a) By a subsequent will that revokes, or partially revokes, the prior will expressly or by inconsistency; or

(b) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator or by another person in the presence and by the direction of the testator. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses.

(2) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent. [1994 c 221 § 12; 1965 c 145 § 11.12.040. Prior: 1917 c 156 § 28; RRS § 1398; prior: Code 1881 § 1321; 1863 p 207 § 55; 1860 p 170 § 22.]

Additional notes found at www.leg.wa.gov

11.12.051 Dissolution, invalidation, or termination of marriage or domestic partnership. (1) If, after making a will, the testator's marriage or domestic partnership is dissolved, invalidated, or terminated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse or former domestic partner are revoked, unless the will expressly provides otherwise. Provisions affected by this section must be interpreted, and property affected passes, as if the former spouse or former domestic partner failed to survive the testator, having died at the time of entry of the decree of dissolution or declaration of invalidity. Provisions revoked by this section are revived by the testator's remar-

riage to the former spouse or reregistration of the domestic partnership with the former domestic partner. Revocation of certain nonprobate transfers is provided under RCW 11.07.010.

(2) This section is remedial in nature and applies to decrees of dissolution and declarations of invalidity entered before, on, or after January 1, 1995. [2008 c 6 § 910; 1994 c 221 § 11.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.12.060 Agreement to convey does not revoke. A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his or her next of kin, if the same had descended to him or her. [2010 c 8 § 2012; 1965 c 145 § 11.12.060. Prior: 1917 c 156 § 30; RRS § 1400; prior: Code 1881 § 1323; 1863 p 208 § 58; 1860 p 170 § 25.]

11.12.070 Devise or bequeathal of property subject to encumbrance. When any real or personal property subject to a mortgage is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides that such mortgage be otherwise paid. The term "mortgage" as used in this section shall not include a pledge of personal property.

A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance. [1965 c 145 § 11.12.070. Prior: 1955 c 205 § 2; 1917 c 156 § 31; RRS § 1401; prior: Code 1881 § 1324; 1860 p 170 § 26.]

11.12.080 Revocation of later will or codicil—Effect—Evidence. (1) If, after making any will, the testator shall execute a later will that wholly revokes the former will, the destruction, cancellation, or revocation of the later will shall not revive the former will, unless it was the testator's intention to revive it.

(2) Revocation of a codicil shall revive a prior will or part of a prior will that the codicil would have revoked had it remained in effect at the death of the testator, unless it was the testator's intention not to revive the prior will or part.

(3) Evidence that revival was or was not intended includes, in addition to a writing by which the later will or codicil is revoked, the circumstances of the revocation or contemporary or subsequent declarations of the testator. [1994 c 221 § 13; 1965 c 145 § 11.12.080. Prior: 1917 c 156 § 35; RRS § 1405; prior: Code 1881 § 1328; 1863 p 208 § 63; 1860 p 171 § 30.]

Additional notes found at www.leg.wa.gov

11.12.091 Omitted child. (1) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child," the child must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted child has been named or provided for, the following rules apply:

(a) A child identified in a will by name is considered named whether identified as a child or in any other manner.

(b) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.

(c) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(3) The omitted child must receive an amount equal in value to that which the child would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination, the court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [1994 c 221 § 9.]

Additional notes found at www.leg.wa.gov

11.12.095 Omitted spouse or omitted domestic partner. (1) If a will fails to name or provide for a spouse or domestic partner of the decedent whom the decedent marries or enters into a domestic partnership after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse" or "omitted domestic partner," the spouse or domestic partner must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted spouse or omitted domestic partner has been named or provided for, the following rules apply:

(a) A spouse or domestic partner identified in a will by name is considered named whether identified as a spouse or domestic partner or in any other manner.

(b) A reference in a will to the decedent's future spouse or spouses or future domestic partner or partners, or words of similar import, constitutes a naming of a spouse or domestic partner whom the decedent later marries or with whom the decedent enters into a domestic partnership. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse or domestic partner who falls within the class.

(c) A nominal interest in an estate does not constitute a provision for a spouse or domestic partner receiving the interest.

(3) The omitted spouse or omitted domestic partner must receive an amount equal in value to that which the spouse or domestic partner would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination the court may consider, among other things, the spouse's or domestic partner's property interests under applicable community property or quasi-community property laws, the various elements of the decedent's dispositive scheme, and a marriage settlement or settlement in a domestic partnership or other provision and provisions for the omitted spouse or omitted domestic partner outside the decedent's will.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [2008 c 6 § 911; 1994 c 221 § 10.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.12.110 Death of grandparent's issue before grantor. Unless otherwise provided, when any property shall be given under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent, or dies before that issue's interest is no longer subject to a contingency, leaving descendants who survive the decedent, those descendants shall take that property as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally or, if of unequal degree, then those of more remote degree shall take by representation with respect to the predeceased issue. [2005 c 97 § 2; 1994 c 221 § 14; 1965 c 145 § 11.12.110. Prior: 1947 c 44 § 1; 1917 c 156 § 34; Rem. Supp. 1947 § 1404; prior: Code 1881 § 1327; 1863 p 208 § 62; 1860 p 171 § 29.]

When beneficiary with disclaimed interest deemed to have died: RCW 11.86.041.

Additional notes found at www.leg.wa.gov

11.12.120 Lapsed gift—Procedure and proof. (1) If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

(2) If the will gives the residue to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, and subject to RCW 11.12.110, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(3) The personal representative of the testator, a person who would be affected by the lapse or distribution of a gift

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under this section, or a guardian ad litem or other representative appointed to represent the interests of a person so affected may petition the court for a determination under this section, and the petition must be heard under the procedures of chapter 11.96A RCW. [1999 c 42 § 604; 1994 c 221 § 15; 1974 ex.s. c 117 § 51; 1965 c 145 § 11.12.120. Prior: 1937 c 151 § 1; RRS § 1404-1.]

Additional notes found at www.leg.wa.gov

11.12.160 Interested witness—Effect on will. (1) An interested witness to a will is one who would receive a gift under the will.

(2) A will or any of its provisions is not invalid because it is signed by an interested witness. Unless there are at least two other subscribing witnesses to the will who are not interested witnesses, the fact that the will makes a gift to a subscribing witness creates a rebuttable presumption that the witness procured the gift by duress, menace, fraud, or undue influence.

(3) If the presumption established under subsection (2) of this section applies and the interested witness fails to rebut it, the interested witness shall take so much of the gift as does not exceed the share of the estate that would be distributed to the witness if the will were not established.

(4) The presumption established under subsection (2) of this section has no effect other than that stated in subsection (3) of this section. [1994 c 221 § 16; 1965 c 145 § 11.12.160. Prior: 1917 c 156 § 38; RRS § 1408; prior: Code 1881 § 1331; 1863 p 209 § 67; 1860 p 171 § 34.]

Additional notes found at www.leg.wa.gov

11.12.170 Devise of land, what passes. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he or she could lawfully devise, unless it shall clearly appear by the will that he or she intended to convey a less estate. [2010 c 8 § 2013; 1965 c 145 § 11.12.170. Prior: 1917 c 156 § 39; RRS § 1409; prior: Code 1881 § 1332; 1863 p 209 § 69; 1860 p 172 § 36.]

11.12.180 Rule in Shelley's Case abolished—Future distribution or interest to heirs. The Rule in Shelley's Case is abolished as a rule of law and as a rule of construction. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives," or "family," or language of similar import, the property passes to those persons, including the state under chapter 11.08 RCW, that would succeed to the designated individual's estate under chapter 11.04 RCW. The property must pass to those persons as if the designated individual had died when the distribution or transfer of the future interest was to take effect in possession or enjoyment. For purposes of this section and RCW 11.12.185, the designated individual's surviving spouse or surviving domestic partner is deemed to be an heir, regardless of whether the surviving spouse or surviving domestic partner has remarried or entered into a subsequent domestic partnership. [2008 c 6 § 912; 1994 c 221 § 17; 1965 c 145 § 11.12.180. Prior: 1917 c 156 § 40; RRS § 1410; prior: Code 1881 § 1333; 1863 p 210 § 70; 1860 p 172 § 37.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.12.185 Doctrine of Worthier Title abolished—Exception. The Doctrine of Worthier Title is abolished as a rule of law and as a rule of construction. However, the Doctrine of Worthier Title is preserved as a rule of construction if:

(1) A grantor has established in inter vivos trust of real property;

(2) The grantor has expressly reserved a reversion to himself or herself; and

(3) The words "heirs" or "heirs at law" are used by the grantor to describe the quality of the grantor's title in the reversion as an estate in fee simple in the event that the property reverts to the grantor.

In all other cases, language in a governing instrument describing the beneficiaries of a donative disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor. [1994 c 221 § 18.]

Additional notes found at www.leg.wa.gov

11.12.190 Will to operate on after-acquired property.

Any estate, right or interest in property acquired by the testator after the making of his or her will may pass thereby and in like manner as if title thereto was vested in him or her at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. [2010 c 8 § 2014; 1965 c 145 § 11.12.190. Prior: 1917 c 156 § 41; RRS § 1411; prior: Code 1881 § 1334; 1863 p 210 § 71; 1860 p 172 § 38.]

11.12.220 No interest on devise unless will so provides. No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provides for such interest. [1965 c 145 § 11.12.220. Prior: 1917 c 156 § 26; RRS § 1396.]

11.12.230 Intent of testator controlling. All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them. [1965 c 145 § 11.12.230. Prior: 1917 c 156 § 45; RRS § 1415; prior: Code 1881 § 1338; 1863 p 210 § 75; 1860 p 172 § 42.]

11.12.250 Gift to trust. A gift may be made by a will to a trustee of a trust executed by any trustor or testator (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if (1) the trust is identified in the testator's will and (2) its terms are evidenced either (a) in a written instrument other than a will, executed by the trustor prior to or concurrently with the execution of the testator's will or (b) in the will of a person who has predeceased the testator, regardless of when executed. The existence, size, or character of the corpus of the trust is immaterial to the validity of the gift. Such gift shall not be invalid because the trust is amend-

able or revocable, or both, or because the trust was amended after the execution of the testator's will or after the testator's death. Unless the will provides otherwise, the property so given shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the terms of the instrument establishing the trust, including any amendments, made prior to the death of the testator, and regardless of whether made before or after the execution of the will. Unless the will provides otherwise, an express revocation of the trust prior to the testator's death invalidates the gift. Any termination of the trust other than by express revocation does not invalidate the gift. For purposes of this section, the term "gift" includes the exercise of any testamentary power of appointment. [1985 c 23 § 2. Prior: 1984 c 149 § 5; 1965 c 145 § 11.12.250; prior: 1959 c 116 § 1.]

Purpose—1985 c 23: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 23 § 1.]

Trusts—Rule against perpetuities: Chapter 11.98 RCW.

Additional notes found at www.leg.wa.gov

11.12.255 Incorporation by reference. A will may incorporate by reference any writing in existence when the will is executed if the will itself manifests the testator's intent to incorporate the writing and describes the writing sufficiently to permit its identification. In the case of any inconsistency between the writing and the will, the will controls. [1985 c 23 § 3. Prior: 1984 c 149 § 6.]

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Additional notes found at www.leg.wa.gov

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements. (1) A will or a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will or trust other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will or trust refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator or grantor, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will or trust and need not have significance apart from its effect upon the dispositions of property made by the will or trust. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will or trust itself, except that if any person designated to receive property in the writing dies before the testator or grantor, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and, in the case of a will, RCW 11.12.110 shall not apply to such lapse.

(3) The testator or grantor may make subsequent handwritten or signed changes to any writing. If there is an incon-

sistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities. [2007 c 475 § 3; 1985 c 23 § 4. Prior: 1984 c 149 § 7.]

Severability—2007 c 475: See RCW 11.05A.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Additional notes found at www.leg.wa.gov

11.12.265 Filing of original will with court before death of testator. Any person who has custody or control of any original will and who has not received knowledge of the death of the testator may deliver the will for filing under seal to any court having jurisdiction. The testator may withdraw the original will so filed upon proper identification. Any other person, including an attorney-in-fact or guardian of the testator, may withdraw the original will so filed only upon court order after showing of good cause. Upon request and presentation of a certified copy of the testator's death certificate, the clerk shall unseal the file. This section does not preclude filing a will not under seal and does not alter any duty of a person having knowledge of the testator's death to file the will. [2004 c 72 § 1.]

Chapter 11.18 RCW

LIABILITY OF BENEFICIARY OF NONPROBATE ASSET

Sections

11.18.200 Liability of beneficiary of nonprobate asset—Abatement.

11.18.200 Liability of beneficiary of nonprobate asset—Abatement. (1) Unless expressly exempted by statute, a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, the asset's fair share of expenses of administration, and the asset's share of estate taxes under *chapter 83.110 RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative shall give notice to the beneficiary, in the manner provided in chapter 11.96A RCW, that the beneficiary is liable to account under this section.

(2) The following rules govern in applying subsection (1) of this section:

(a) A beneficiary of property passing at death under a community property agreement takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section. However, assets existing as community or separate property immediately before the decedent's death under the community property agreement are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(b) A beneficiary of property held in joint tenancy form with right of survivorship, including without limitation United States savings bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(c) A beneficiary of payable-on-death or trust bank accounts, bonds, securities, or similar obligations, including without limitation United States bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(d) A beneficiary of deeds or conveyances made by the decedent if possession has been postponed until the death of the decedent takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(e) A trust for the decedent's use of which the decedent is the grantor is subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the same extent as the trust was subject to claims of the decedent's creditors immediately before death under RCW 19.36.020.

(f) A trust not for the use of the grantor but of which the decedent is the grantor and that becomes effective or irrevocable only upon the decedent's death is subject to the decedent's claims, liabilities, estate taxes, and expenses of administration as described in subsection (1) of this section.

(g) Anything in this section to the contrary notwithstanding, nonprobate assets that existed as community property immediately before the decedent's death are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(h) The liability of a beneficiary of life insurance is governed by chapter 48.18 RCW.

(i) The liability of a beneficiary of pension or retirement employee benefits is governed by chapter 6.15 RCW.

(j) An inference may not be drawn from (a) through (i) of this subsection that a beneficiary of nonprobate assets other than those assets specifically described in (a) through (i) of this subsection does or does not take the assets subject to claims, liabilities, estate taxes, and administration expenses as described in subsection (1) of this section.

(3) Nothing in this section derogates from the rights of a person interested in the estate to recover tax under *chapter 83.110 RCW or from the liability of any beneficiary for estate tax under *chapter 83.110 RCW.

(4) Nonprobate assets that may be responsible for the satisfaction of the decedent's general liabilities and claims abate together with the probate assets of the estate in accord with chapter 11.10 RCW. [1999 c 42 § 605; 1997 c 252 § 3; 1994 c 221 § 19.]

***Reviser's note:** Chapter 83.110 RCW was repealed in its entirety by 2005 c 332 § 15, effective January 1, 2006. Later enactment, see chapter 83.110A RCW.

Additional notes found at www.leg.wa.gov

Chapter 11.20 RCW CUSTODY, PROOF, AND PROBATE OF WILLS

Sections

11.20.010	Duty of custodian of will—Liability.
11.20.020	Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses.
11.20.030	Commission to take testimony of witness.
11.20.040	Proof where one or more witnesses are unable or incompetent to testify, or absent from state.
11.20.050	Recording of wills.
11.20.060	Record of will as evidence.
11.20.070	Proof of lost or destroyed will.
11.20.080	Restraint of personal representative during pendency of application to prove lost or destroyed will.
11.20.090	Admission to probate of foreign will.
11.20.100	Laws applicable to foreign wills.

11.20.010 Duty of custodian of will—Liability. Any person having the custody or control of any will shall, within thirty days after he or she shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his or her custody or control any will shall within forty days after he or she received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation. [2010 c 8 § 2015; 1965 c 145 § 11.20.010. Prior: 1917 c 156 § 9; RRS § 1379; prior: Code 1881 §§ 1342, 1343; 1863 p 212 § 78; 1860 p 174 § 45.]

Refusal to serve as executor: RCW 11.28.010.

11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses. (1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as herein-after provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at

the request of the testator or, after his or her decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be attached to the will or to a photographic copy of the will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court. [2010 c 8 § 2016; 1977 ex.s. c 234 § 2; 1974 ex.s. c 117 § 27; 1969 ex.s. c 126 § 1; 1965 c 145 § 11.20.020. Prior: 1917 c 156 § 10; RRS § 1380; prior: 1863 p 212 §§ 85, 86; 1860 p 175 §§ 52, 53.]

Will contests: Chapter 11.24 RCW.

Additional notes found at www.leg.wa.gov

11.20.030 Commission to take testimony of witness. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, notary public, or other person authorized to administer an oath, empowering him or her to take and certify the attestation of such witness. [1987 c 202 § 171; 1965 c 145 § 11.20.030. Prior: 1923 c 142 § 1; 1917 c 156 § 11; RRS § 1381; prior: Code 1881 § 1351; 1863 p 212 § 87; 1860 p 175 § 54.]

Intent—1987 c 202: See note following RCW 2.04.190.

11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state. The subsequent incompetency from whatever cause of one or more of the subscribing witnesses, or their inability to testify in open court or pursuant to commission, or their absence from the state, shall not prevent the probate of the will. In such cases the court shall admit the will to probate upon satisfactory testimony that the handwriting of the testator and of an incompetent or absent subscribing witness is genuine or the court may consider such other facts and circumstances, if any, as would tend to prove such will. [1967 c 168 § 5; 1965 c 145 § 11.20.040. Prior: 1945 c 39 § 1; 1943 c 219 § 1; 1917 c 156 § 12; Rem. Supp. 1945 § 1382; prior: Code 1881 § 1353; 1863 p 213 §§ 89, 90; 1860 p 175 §§ 56, 57.]

11.20.050 Recording of wills. All wills filed with the clerk of the superior court must be noted in the record required to be kept under RCW 36.23.030(7). They may be withdrawn from the record on the order of the court. [2002 c 271 § 1; 1967 c 168 § 17; 1965 c 145 § 11.20.050. Prior: 1915 c 156 § 13; RRS § 1383; prior: Code 1881 § 1356; 1863 p 213 § 92; 1860 p 175 § 59.]

Clerk to keep record of wills: RCW 36.23.030(7).

11.20.060 Record of will as evidence. The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [1965 c 145 § 11.20.060. Prior: 1917 c 156 § 14; RRS § 1384; prior: 1891 p 382 § 7; Code 1881 § 1358; 1863 p 213 § 94; 1860 p 175 § 61.]

Certified copies of recorded instruments as evidence: RCW 5.44.060.

**Chapter 11.24 RCW
WILL CONTESTS**

Sections

11.24.010	Contest of probate or rejection—Limitation of action—Issues.
11.24.020	Filing of will contest petition—Notice.
11.24.030	Burden of proof.
11.24.040	Revocation of probate.
11.24.050	Costs.

11.20.070 Proof of lost or destroyed will. (1) If a will has been lost or destroyed under circumstances such that the loss or destruction does not have the effect of revoking the will, the court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The proof must be reduced to writing and signed by any witnesses who have testified as to the execution and validity, and must be filed with the clerk of the court.

(2) The provisions of a lost or destroyed will must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.

(3) When a lost or destroyed will is established under subsections (1) and (2) of this section, its provisions must be distinctly stated in the judgment establishing it, and the judgment must be recorded as wills are required to be recorded. A personal representative may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate. [1994 c 221 § 20; 1965 c 145 § 11.20.070. Prior: 1955 c 205 § 1; 1917 c 156 § 20; RRS § 1390; prior: Code 1881 § 1367; 1860 p 177 § 70.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

Additional notes found at www.leg.wa.gov

11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the personal representatives so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [1965 c 145 § 11.20.080. Prior: 1917 c 156 § 21; RRS § 1391; prior: Code 1881 § 1369; 1863 p 215 § 105; 1860 p 177 § 72.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

11.20.090 Admission to probate of foreign will. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, certified by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, certification by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1977 ex.s. c 234 § 3; 1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

Additional notes found at www.leg.wa.gov

11.20.100 Laws applicable to foreign wills. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state. [1965 c 145 § 11.20.100. Prior: 1917 c 156 § 23; RRS § 1393; prior: Code 1881 § 1371; 1877 p 284 § 2.]

(2012 Ed.)

11.24.010 Contest of probate or rejection—Limitation of action—Issues. If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final. [2007 c 475 § 4; 1994 c 221 § 21; 1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

Severability—2007 c 475: See RCW 11.05A.903.

Additional notes found at www.leg.wa.gov

11.24.020 Filing of will contest petition—Notice. Upon the filing of the petition referred to in RCW 11.24.010, notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, to all legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, and to all persons interested in the matter, as defined in *RCW 11.96A.030(5). [2006 c 360 § 9; 1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

***Reviser's note:** RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (6).

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.24.030 Burden of proof. In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if pro-

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bated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will. [1965 c 145 § 11.24.030. Prior: 1917 c 156 § 17; RRS § 1387.]

11.24.040 Revocation of probate. If, upon the trial of said issue, it shall be decided that the will or a part of it is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will or part and probate thereof shall be annulled and revoked and to that extent the powers of the personal representative shall cease, but the personal representative shall not be liable for any act done in good faith previous to such annulling or revoking. [1994 c 221 § 22; 1965 c 145 § 11.24.040. Prior: 1917 c 156 § 18; RRS § 1388; prior: Code 1881 § 1364; 1863 p 214 § 100; 1860 p 177 § 67.]

Additional notes found at www.leg.wa.gov

11.24.050 Costs. If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper. [1965 c 145 § 11.24.050. Prior: 1917 c 156 § 19; RRS § 1389; prior: Code 1881 § 1366; 1860 p 177 § 69.]

Rules of court: *SPR 98.12W.*

Personal representative

allowance of necessary expenses: *RCW 11.48.050.*

compensation—Attorney's fee: *RCW 11.48.210.*

Chapter 11.28 RCW LETTERS TESTAMENTARY AND OF ADMINISTRATION

Sections

11.28.010	Letters to executors—Refusal to serve—Disqualification.
11.28.020	Objections to appointment.
11.28.030	Community property—Who entitled to letters—Waiver.
11.28.040	Procedure during minority or absence of executor.
11.28.050	Powers of remaining executors on removal of associate.
11.28.060	Administration with will annexed on death of executor.
11.28.070	Authority of administrator with will annexed.
11.28.085	Records and certification of letters—Record of bonds.
11.28.090	Execution and form of letters testamentary.
11.28.100	Form of letters with will annexed.
11.28.110	Application for letters of administration or adjudication of intestacy and heirship.
11.28.120	Persons entitled to letters.
11.28.131	Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse or surviving domestic partner.
11.28.140	Form of letters of administration.
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11.28.170	Oath of personal representative.
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11.28.250	Revocation of letters—Causes.

11.28.260	Revocation of letters—Proceedings in court or chambers.
11.28.270	Powers of remaining personal representatives if letters to associates revoked or surrendered or upon disqualification.
11.28.280	Successor personal representative.
11.28.290	Accounting on death, resignation, or revocation of letters.
11.28.300	Proceedings against delinquent personal representative.
11.28.330	Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing.
11.28.340	Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications.

Administration of deceased incompetent's estate: *RCW 11.88.150.*

Letters after final settlement: *RCW 11.76.250.*

Replacement of lost or destroyed probate records: *RCW 5.48.060.*

Trust company may not solicit appointment as personal representative: *RCW 30.04.260.*

11.28.010 Letters to executors—Refusal to serve—Disqualification. After the entry of an order admitting a will to probate and appointing a personal representative, or personal representatives, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will. [1974 ex.s. c 117 § 28; 1965 c 145 § 11.28.010. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

Additional notes found at www.leg.wa.gov

11.28.020 Objections to appointment. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court. [1965 c 145 § 11.28.020. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

11.28.030 Community property—Who entitled to letters—Waiver. A surviving spouse or surviving domestic partner shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse or such domestic partner to be otherwise qualified; but if such surviving spouse or surviving domestic partner do not make application for such appointment within forty days immediately following the death of the deceased spouse or deceased domestic partner, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse or surviving domestic partner, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse or surviving domestic partner, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or surviving domestic partner or that he or she has in writing waived the right to administer upon such community property. [2008 c 6 § 913; 1965 c 145 § 11.28.030. Prior: 1917 c 156 § 49; RRS § 1419.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.28.040 Procedure during minority or absence of executor. If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former, provided a nonresident of this state may qualify as provided in RCW 11.36.010. [1965 c 145 § 11.28.040. Prior: 1917 c 156 § 50; RRS § 1420; prior: Code 1881 § 1374; 1863 p 217 § 108; 1860 p 180 § 75.]

11.28.050 Powers of remaining executors on removal of associate. When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose. [1965 c 145 § 11.28.050. Prior: 1917 c 156 § 54; RRS § 1424; prior: Code 1881 § 1372; 1854 p 268 § 5.]

11.28.060 Administration with will annexed on death of executor. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued. [1965 c 145 § 11.28.060. Prior: 1917 c 156 § 53; RRS § 1423; prior: Code 1881 § 1379; 1863 p 218 § 113; 1860 p 180 § 80.]

Executor of executor may not sue for estate of first testator: RCW 11.48.190.

11.28.070 Authority of administrator with will annexed. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose: PROVIDED, That they shall not lease, mortgage, pledge, exchange, sell, or convey any real or personal property of the estate except under order of the court and pursuant to procedure under existing laws pertaining to the administration of estates in cases of intestacy, unless the powers expressed in the will are directory and not discretionary, or said administrator with will annexed shall have obtained non-intervention powers as provided in chapter 11.68 RCW. [1974 ex.s. c 117 § 25; 1965 c 145 § 11.28.070. Prior: 1955 c 205 § 3; 1917 c 156 § 55; RRS § 1425; prior: Code 1881 § 1381; 1860 p 180 § 82.]

Additional notes found at www.leg.wa.gov

11.28.085 Records and certification of letters—Record of bonds. See RCW 36.23.030.

11.28.090 Execution and form of letters testamentary. Letters testamentary to be issued to executors under the provisions of this chapter shall be signed by the clerk, and

(2012 Ed.)

issued under the seal of the court, and may be in the following form:

State of Washington, county of

In the superior court of the county of

Whereas, the last will of A B, deceased, was, on the day of, A.D.,, duly exhibited, proven, and recorded in our said superior court; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all persons by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this day of, A.D., 19. [2009 c 549 § 1004; 1965 c 145 § 11.28.090. Prior: (i) 1917 c 156 § 56; RCW 11.28.080; RRS § 1426; prior: Code 1881 § 1382; 1863 p 218 § 116; 1860 p 181 § 83. (ii) 1917 c 156 § 59; RRS § 1429; prior: Code 1881 § 1386; 1863 p 219 § 120; 1860 p 181 § 87.]

11.28.100 Form of letters with will annexed. Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary. [1965 c 145 § 11.28.100. Prior: 1917 c 156 § 60; RRS § 1430; prior: Code 1881 § 1387; 1863 p 219 § 121.]

11.28.110 Application for letters of administration or adjudication of intestacy and heirship. Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his or her attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330 or 11.28.340. [2010 c 8 § 2017; 1977 ex.s. c 234 § 4; 1974 ex.s. c 117 § 29; 1965 c 145 § 11.28.110. Prior: 1917 c 156 § 62; RRS § 1432; prior: Code 1881 § 1389; 1863 p 220 § 123; 1860 p 182 § 90.]

Additional notes found at www.leg.wa.gov

11.28.120 Persons entitled to letters. Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney-in-fact appointed by the decedent, if any such a fiduciary con-

trolled or potentially controlled substantially all of the decedent's probate and nonprobate assets.

(4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.

(5)(a) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.

(b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in *RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate. [2007 c 156 § 28; 1995 1st sp.s. c 18 § 61; 1994 c 221 § 23; 1985 c 133 § 1; 1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

*Reviser's note: RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Additional notes found at www.leg.wa.gov

11.28.131 Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse or surviving domestic partner. When a petition for general letters of administration or for letters of administration with the will annexed shall be filed, the matter may be heard forthwith, appointment made and letters of administration issued: PROVIDED, That if there be a surviving spouse or surviving domestic partner and a petition is presented by anyone other than the surviving spouse or surviving domestic partner, or any person designated by the surviving spouse or surviving domestic partner to serve as personal representative on his or her behalf, notice to the surviving spouse or surviving domestic partner shall be given of the time and place of such hearing at least ten days before the hearing, unless the surviving spouse or surviving domestic partner shall waive notice of the hearing in writing filed in the cause. [2008 c 6 § 914; 1974 ex.s. c 117 § 44.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.28.140 Form of letters of administration. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, County of

Whereas, A.B., late of on or about the day of A.D., died intestate, leaving at the time of his or her death, property in this state subject to administration: Now, therefore, know all persons by these presents, that we do hereby appoint administrator upon said estate,

and whereas said administrator has duly qualified, hereby authorize him or her to administer the same according to law.

Witness my hand and the seal of said court this day of A.D., 19. . . . [2009 c 549 § 1005; 1965 c 145 § 11.28.140. Prior: 1917 c 156 § 65; RRS § 1435; prior: Code 1881 § 1392; 1863 p 220 § 125; 1860 p 182 § 92.]

11.28.150 Revocation of letters by discovery of will. If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted. [1965 c 145 § 11.28.150. Prior: 1917 c 156 § 51; RRS § 1421; prior: Code 1881 § 1375; 1863 p 218 § 109; 1860 p 180 § 76.]

11.28.160 Cancellation of letters of administration. The court appointing any personal representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other personal representatives in the place of those removed. [1965 c 145 § 11.28.160. Prior: 1917 c 156 § 52; RRS § 1422.]

Revocation of letters—Causes: RCW 11.28.250.

11.28.170 Oath of personal representative. Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the trust as personal representative will be performed according to law, which oath must be filed in the cause. [2005 c 97 § 3; 1965 c 145 § 11.28.170. Prior: 1917 c 156 § 66; RRS § 1436; prior: Code 1881 § 1393; 1877 p 211 § 4; 1873 p 329 § 366.]

11.28.185 Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security. When the terms of the decedent's will manifest an intent that the personal representative appointed to administer the estate shall not be required to furnish bond or other security, or when the personal representative is the surviving spouse or surviving domestic partner of the decedent and it appears to the court that the entire estate, after provision for expenses and claims of creditors, will be distributable to such spouse or surviving domestic partner, then such personal representative shall not be required to give bond or other security as a condition of appointment. In all cases where a bank or trust company authorized to act as personal representative is appointed as personal representative, no bond shall be required. In all other cases, unless waived by the court, the personal representative shall give such bond or other security, in such amount and with such surety or sureties, as the court may direct.

Every person required to furnish bond must, before receiving letters testamentary or of administration, execute a bond to the state of Washington conditioned that the personal representative shall faithfully execute the duty of the trust according to law.

The court may at any time after appointment of the personal representative require said personal representative to give a bond or additional bond, the same to be conditioned

and to be approved as provided in this section; or the court may allow a reduction of the bond upon a proper showing.

In lieu of bond, the court may in its discretion, substitute other security or financial arrangements, such as provided under RCW 11.88.105, or as the court may deem adequate to protect the assets of the estate. [2008 c 6 § 915; 1977 ex.s. c 234 § 5; 1974 ex.s. c 117 § 46.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.28.190 Examination of sureties—Additional security—Costs. Before the judge approves any bond required under this chapter, and after its approval, he or she may, of his or her own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him or her at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the personal representative, requiring his or her appearance on the return of the citation, and on its return he or she may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he or she is satisfied that the bond is insufficient he or she must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: PROVIDED, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed. [2010 c 8 § 2018; 1965 c 145 § 11.28.190. Prior: 1917 c 156 § 68; RRS § 1438; prior: Code 1881 § 1400; 1877 p 212 § 4; 1863 p 221 § 129; 1860 p 183 § 96.]

Fees and allowances of witnesses: Chapter 2.40 RCW, RCW 5.56.010.

11.28.210 New or additional bond. Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the personal representative to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises. [1965 c 145 § 11.28.210. Prior: 1917 c 156 § 70; RRS § 1440; prior: 1891 p 383 § 13 1/2; Code 1881 § 1404; 1877 p 212 § 4; 1863 p 221 § 131; 1860 p 183 § 98.]

11.28.220 Persons disqualified as sureties. No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney-at-law shall be taken as surety on any bond required to be taken in any proceeding in probate. [1965 c 145 § 11.28.220. Prior: 1917 c 156 § 71; RRS § 1441; prior: 1891 p 383 § 14; Code 1881 § 1409; 1863 p 221 § 128; 1860 p 183 § 95.]

(2012 Ed.)

11.28.230 Bond not void for want of form—Successive recoveries. No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his or her own name, until the whole penalty is exhausted. [2010 c 8 § 2019; 1965 c 145 § 11.28.230. Prior: 1917 c 156 § 73; RRS § 1443; prior: Code 1881 §§ 1412, 1397; 1877 p 211 § 4; 1854 p 219 § 489.]
Bond not to fail for want of form or substance: RCW 19.72.170.

11.28.235 Limitation of action against sureties. All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal. [1965 c 145 § 11.28.235. Prior: 1917 c 156 § 80; RCW 11.28.310; RRS § 1450; prior: 1891 p 385 § 21; Code 1881 § 1431; 1854 p 274 § 42.]

11.28.237 Notice of appointment as personal representative, pendency of probate—Proof by affidavit. (1) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause. If a trust is a legatee or devisee of the estate or a beneficiary or transferee of a nonprobate asset of the decedent, then notice to the trustee is sufficient.

(2) If the personal representative does not otherwise give notice to creditors under chapter 11.40 RCW within thirty days after appointment, the personal representative shall cause written notice of his or her appointment and the pendency of the probate proceedings to be mailed to the state of Washington department of social and health services' office of financial recovery, and proof of the mailing shall be made by affidavit and filed in the cause. [2011 c 327 § 2; 1997 c 252 § 85; 1994 c 221 § 24; 1977 ex.s. c 234 § 6; 1974 ex.s. c 117 § 30; 1969 c 70 § 2; 1965 c 145 § 11.28.237. Prior: 1955 c 205 § 13, part; RCW 11.76.040, part.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Additional notes found at www.leg.wa.gov

11.28.238 Notice of appointment as personal representative—Notice to department of revenue. Duty of personal representative to notify department of revenue of administration; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.28.240 Request for special notice of proceedings in probate—Prohibitions. (1) At any time after the issuance of letters testamentary or of administration or certificate of qual-

ification upon the estate of any decedent, any person interested in the estate as an heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or the lawyer for the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative or upon the lawyer for the personal representative, and file with the clerk of the court wherein the administration of the estate is pending, a written request stating that the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of the estate, to wit:

- (a) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.
- (b) Petitions for any order of solvency or for nonintervention powers.
- (c) Filing of accounts.
- (d) Filing of petitions for distribution.
- (e) Petitions by the personal representative for family allowances and homesteads.
- (f) The filing of a declaration of completion.
- (g) The filing of the inventory.
- (h) Notice of presentation of personal representative's claim against the estate.
- (i) Petition to continue a going business.
- (j) Petition to borrow upon the general credit of the estate.
- (k) Petition for judicial proceedings under chapter 11.96A RCW.
- (l) Petition to reopen an estate.
- (m) Intent to distribute estate assets, other than distributions in satisfaction of specific bequests or legacies of specific dollar amounts.
- (n) Intent to pay attorney's or personal representative's fees.

The requests shall state the post office address of the heir, devisee, distributee, legatee or creditor, or his or her lawyer, and thereafter a brief notice of the filing of any of the petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other tangible personal property which will incur expense or loss by keeping, shall be addressed to the heir, devisee, distributee, legatee or creditor, or his or her lawyer, at the post office address stated in the request, and deposited in the United States post office, with prepaid postage, at least ten days before the hearing of the petition, account or claim or of the proposed distribution or payment of fees; or personal service of the notices may be made on the heir, devisee, distributee, legatee, creditor, or lawyer, not less than five days before the hearing, and the personal service shall have the same effect as deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of the petition, account or claim or of the proposed distribution or payment of fees. If the notice has been regularly given, any distribution or payment of fees and any order or judgment, made in accord therewith is final and conclusive.

(2) Notwithstanding subsection (1) of this section, a request for special notice may not be made by a person, and any request for special notice previously made by a person becomes null and void, when:

(a) That person qualifies to request special notice solely by reason of being a specific legatee, all of the property that person is entitled to receive from the decedent's estate has

been distributed to that person, and that person's bequest is not subject to any subsequent abatement for the payment of the decedent's debts, expenses, or taxes;

(b) That person qualifies to request special notice solely by reason of being an heir of the decedent, none of the decedent's property is subject to the laws of descent and distribution, the decedent's will has been probated, and the time for contesting the probate of that will has expired; or

(c) That person qualifies to request special notice solely by reason of being a creditor of the decedent and that person has received all of the property that the person is entitled to receive from the decedent's estate. [1999 c 42 § 606; 1997 c 252 § 4; 1985 c 30 § 5. Prior: 1984 c 149 § 8; 1965 c 145 § 11.28.240; prior: 1941 c 206 § 1; 1939 c 132 § 1; 1917 c 156 § 64; Rem. Supp. 1941 § 1434.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.

Claim of personal representative—Presentation and petition—Filing: RCW 11.40.140.

Continuation of decedent's business: RCW 11.48.025.

Purchase of claims by personal representative: RCW 11.48.080.

Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

Sales, exchanges, leases, mortgages and borrowing: Chapter 11.56 RCW.

Additional notes found at www.leg.wa.gov

11.28.250 Revocation of letters—Causes. Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his or her charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided. [2010 c 8 § 2020; 1965 c 145 § 11.28.250. Prior: 1917 c 156 § 74; RRS § 1444; prior: Code 1881 § 1414; 1863 p 218 § 112; 1860 p 186 § 114.]

Absentee estates, removal of trustee: RCW 11.80.060.

Accounting on revocation of letters: RCW 11.28.290.

Cancellation of letters of administration: RCW 11.28.160.

Effect on compensation of personal representative who fails to discharge duties: RCW 11.48.210.

Notice to creditors when personal representative removed—Limit tolled by vacancy: RCW 11.40.150.

Revocation of letters

by discovery of will: RCW 11.28.150.

upon conviction of crime or becoming of unsound mind: RCW 11.36.010.

Successor personal representative: RCW 11.28.280.

11.28.260 Revocation of letters—Proceedings in court or chambers. The applications and acts authorized by RCW 11.28.250 may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court. [1965 c 145 § 11.28.260. Prior: 1917 c 156 § 75; RRS § 1445; prior: 1891 p 384 § 17; Code 1881 § 1413; 1877 p 213 § 4.]

11.28.270 Powers of remaining personal representatives if letters to associates revoked or surrendered or upon disqualification. If more than one personal representative of an estate is serving when the letters to any of them are revoked or surrendered or when any part of them dies or in any way becomes disqualified, those who remain shall perform all the duties required by law unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. [1997 c 252 § 5; 1965 c 145 § 11.28.270. Prior: 1917 c 156 § 76; RRS § 1446; prior: Code 1881 § 1427; 1854 p 273 § 38.]

Additional notes found at www.leg.wa.gov

11.28.280 Successor personal representative. Except as otherwise provided in RCW 11.28.270, if a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, letters testamentary or letters of administration of the estate remaining unadministered shall be granted to those to whom the letters would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. A succeeding personal representative may petition for nonintervention powers under chapter 11.68 RCW. [1997 c 252 § 6; 1974 ex.s. c 117 § 26; 1965 c 145 § 11.28.280. Prior: 1955 c 205 § 8; 1917 c 156 § 77; RRS § 1447; prior: Code 1881 § 1428.]

Additional notes found at www.leg.wa.gov

11.28.290 Accounting on death, resignation, or revocation of letters. If any personal representative resign, or his or her letters be revoked, or he or she die, he or she or his or her representatives shall account for, pay, and deliver to his or her successor or to the surviving or remaining personal representatives, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on final settlement with such personal representative or his or her legal representatives. [2010 c 8 § 2021; 1965 c 145 § 11.28.290. Prior: 1917 c 156 § 78; RRS § 1448; prior: Code 1881 § 1429; 1854 p 273 § 40.]

11.28.300 Proceedings against delinquent personal representative. The succeeding administrator, or remaining personal representative may proceed by law against any delinquent former personal representative, or his or her personal representatives, or the sureties of either, or against any other person possessed of any part of the estate. [2010 c 8 § 2022; 1965 c 145 § 11.28.300. Prior: 1917 c 156 § 79; RRS § 1449; prior: 1891 p 384 § 20; Code 1881 § 1430; 1854 p 273 § 41.]

(2012 Ed.)

Limitation of action against sureties: RCW 11.28.235.

11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing. If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, within thirty days shall personally serve or mail a true copy of the adjudication to each heir, legatee, and devisee of the decedent, which copy shall contain the name of the decedent's estate and the probate cause number, and shall:

- (1) State the name and address of the applicant;
- (2) State that on the day of,, the applicant obtained an order from the superior court of county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;
- (3) In the event the decedent died testate, enclose a copy of his or her will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;
- (4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause;

- (5) Mail a true copy of the adjudication, including the decedent's social security number and the name and address of the applicant, to the state of Washington department of social and health services office of financial recovery. [2010 c 8 § 2023; 2004 c 193 § 1; 1974 ex.s. c 117 § 31.]

Additional notes found at www.leg.wa.gov

11.28.340 Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications. Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing or service of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed or on whom served, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his or her last will and testament and persons entitled to receive his or her estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his or her estate as his or her heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications.

Four months after providing all notices as required in RCW 11.28.330, any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent. [2010 c 8 § 2024; 2004 c 193 § 2; 1988 c 29 § 1; 1977 ex.s. c 234 § 7; 1974 ex.s. c 117 § 32.]

Additional notes found at www.leg.wa.gov

Chapter 11.32 RCW SPECIAL ADMINISTRATORS

Sections

11.32.010	Appointment.
11.32.020	Bond.
11.32.030	Powers and duties.
11.32.040	Succession by personal representative.
11.32.050	Not liable to creditors.
11.32.060	To render account.

11.32.010 Appointment. When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his or her discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he or she shall, nevertheless, proceed in the execution of his or her trust until he or she shall be otherwise ordered by the appellate court. [2010 c 8 § 2025; 1965 c 145 § 11.32.010. Prior: 1917 c 156 § 81; RRS § 1451; prior: 1891 p 384 § 19; Code 1881 § 1419; 1863 p 222 § 137; 1860 p 184 § 104.]

11.32.020 Bond. Every such administrator shall, before entering on the duties of his or her trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with conditions as required of an executor or in other cases of administration: PROVIDED, That in all cases where a bank or trust company

authorized to act as administrator is appointed special administrator or acts as special administrator under an appointment as such heretofore made, no bond shall be required. [2010 c 8 § 2026; 1965 c 145 § 11.32.020. Prior: 1963 c 46 § 2; 1917 c 156 § 82; RRS § 1452; prior: Code 1881 § 1420; 1863 pp 220, 222 §§ 126, 138; 1860 pp 183, 184 §§ 93, 105.]

Bond of personal representative: RCW 11.28.185.

11.32.030 Powers and duties. Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts, as stated in the order of appointment. Such special administrator shall be allowed such compensation for his or her services as the said court shall deem reasonable, together with reasonable fees for his or her attorney. [2010 c 8 § 2027; 1965 c 145 § 11.32.030. Prior: 1917 c 156 § 83; RRS § 1453; prior: Code 1881 § 1421; 1863 p 222 § 139; 1860 p 185 § 106.]

11.32.040 Succession by personal representative. Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he or she shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his or her hands, and the personal representative may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former personal representative. The estate shall be liable for obligations incurred by the special administrator pursuant to the order of appointment or approved by the court. [2010 c 8 § 2028; 1965 c 145 § 11.32.040. Prior: 1917 c 156 § 84; RRS § 1454; prior: Code 1881 § 1422; 1863 p 233 § 140; 1860 p 185 § 107.]

11.32.050 Not liable to creditors. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [1965 c 145 § 11.32.050. Prior: 1917 c 156 § 85; RRS § 1455; prior: Code 1881 § 1423; 1863 p 223 § 141; 1860 p 185 § 108.]

11.32.060 To render account. The special administrator shall also render an account, under oath, of his or her proceedings, in like manner as other administrators are required to do. [2010 c 8 § 2029; 1965 c 145 § 11.32.060. Prior: 1917 c 156 § 86; RRS § 1456; prior: Code 1881 § 1424; 1863 p 223 § 142; 1860 p 185 § 109.]

Settlement of estates: Chapter 11.76 RCW.

Chapter 11.36 RCW
QUALIFICATIONS OF
PERSONAL REPRESENTATIVES

Sections

- 11.36.010 Parties disqualified—Result of disqualification after appointment.
11.36.021 Trustees—Who may serve.

11.36.010 Parties disqualified—Result of disqualification after appointment. The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude: PROVIDED, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of decedents' or incompetents' estates upon petition of any person having a right to such appointment and may act as executors or guardians when so appointed by will: PROVIDED FURTHER, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives. No trust company or national bank may qualify as such executor or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank. When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters. A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative shall file a bond to be approved by the court. [1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

Rules of court: *Counsel fees:* SPR 98.12W.

Financial institutions may act as guardian: RCW 11.88.020.

Procedure during minority or absence of executor: RCW 11.28.040.

Trust company may act as personal representative: RCW 30.08.150.

11.36.021 Trustees—Who may serve. (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the

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corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary. [1991 c 72 § 1; 1985 c 30 § 6. Prior: 1984 c 149 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.40 RCW
CLAIMS AGAINST ESTATE

Sections

- 11.40.010 Claims—Presentation—Other notice not affected.
11.40.020 Notice to creditors—Manner—Filings—Publication.
11.40.030 Notice to creditors—Form.
11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.
11.40.051 Claims against decedent—Time limits.
11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.
11.40.070 Claims—Form—Manner of presentation—Waiver of defects.
11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims.
11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim.
11.40.110 Action pending at decedent's death—Personal representative as defendant.
11.40.120 Effect of judgment against personal representative.
11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property.
11.40.135 Secured claim—Creditor's right.
11.40.140 Claim of personal representative—Presentation and petition—Filing.
11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy.
11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties.
11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Action on claim not acted on—Contribution: RCW 11.76.170.

Contingent or disputed claims, procedure: RCW 11.76.190.

Evidence, transaction with person since deceased: RCW 5.60.030.

Guardianship—Claims: RCW 11.92.035.

Incompetent, deceased, claims against estate of: RCW 11.88.150.

Judgment against executor or administrator, effect: RCW 4.56.050.

Liability of personal representative: RCW 11.76.160.

Limitation of actions: Chapter 4.16 RCW.

Order maturing claim not due: RCW 11.76.180.

Order of payment of debts: RCW 11.76.110.

Payment of claims where estate insufficient: RCW 11.76.150.

Quasi-community property—Lifetime transfers—Claims by surviving spouse or surviving domestic partner: RCW 26.16.240.

Sale, etc., of property—Priority as to realty or personalty: Chapter 11.10 RCW.

Survival of actions: Chapter 4.20 RCW.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

11.40.010 Claims—Presentation—Other notice not affected. A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter. However, this chapter does not affect the notice under RCW 82.32.240 or the ability to maintain an action against a notice agent under chapter 11.42 RCW. [1997 c 252 § 7; 1995 1st sp.s. c 18 § 58; 1994 c 221 § 25; 1991 c 5 § 1; 1989 c 333 § 1; 1974 ex.s. c 117 § 33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

Publication of legal notices: Chapter 65.16 RCW.

Additional notes found at www.leg.wa.gov

11.40.020 Notice to creditors—Manner—Filings—Publication. (1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.40.030, announcing the personal representative’s appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent’s probate and nonprobate assets. If notice is given:

- (a) The personal representative shall file the notice with the court;
- (b) The personal representative shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered;
- (c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor’s last known address, by regular first-class mail, postage prepaid; and
- (d) The personal representative shall also mail a copy of the notice, including the decedent’s social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are commenced in a county other than the county of the decedent’s residence, then instead of the requirements under subsection (1)(a) and (b) of this section, the personal representative shall cause the notice to creditors in substantially the form set forth in RCW 11.40.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent’s residence and shall file the notice with the superior court of the county in which the probate proceedings were commenced. [2005 c 97 § 4; 1999 c 42 § 601; 1997 c 252 § 8; 1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

Additional notes found at www.leg.wa.gov

11.40.030 Notice to creditors—Form. Notice under RCW 11.40.020 must contain the following elements in substantially the following form:

CAPTION	)	No.
OF CASE	)	PROBATE NOTICE TO
	)	CREDITORS
.....	)	RCW 11.40.030

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative’s attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the probate proceedings were commenced. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(1)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent’s probate and nonprobate assets.

Date of First
Publication:

Personal Representative:

Attorney for the Personal Representative:
Address for Mailing or Service:
Court of probate proceedings and cause number:

[2005 c 97 § 5; 1997 c 252 § 9; 1989 c 333 § 7; 1977 ex.s. c 234 § 8; 1974 ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS § 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

Rules of court: SPR 98.08W, 98.10W, 98.12W.

Additional notes found at www.leg.wa.gov

11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is one that the personal representative would discover upon exercise of reasonable diligence. The personal representative is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent’s correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW

11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The personal representative may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The personal representative may petition the court for an order declaring that the personal representative has made a review and that any creditors not known to the personal representative are not reasonably ascertainable. The petition must be filed under RCW 11.96A.080 and the notice specified under RCW 11.96A.110 must also be given by publication. [1999 c 42 § 607; 1997 c 252 § 10; 1994 c 221 § 28; 1974 ex.s. c 117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

Order of payment of debts: RCW 11.76.110.

Additional notes found at www.leg.wa.gov

11.40.051 Claims against decedent—Time limits. (1) Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:

(a) If the personal representative provided notice under RCW 11.40.020 and the creditor was given actual notice as provided in RCW 11.40.020(1)(c), the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the personal representative provided notice under RCW 11.40.020 and the creditor was not given actual notice as provided in RCW 11.40.020(1)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within four months after the date of first publication of notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within twenty-four months after the decedent's date of death; and

(c) If notice was not provided under this chapter or chapter 11.42 RCW, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) An otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [2005 c 97 § 6; 1997 c 252 § 11.]

Additional notes found at www.leg.wa.gov

11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits. The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.40.051, but the amount of recovery

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cannot exceed the amount of the insurance. The claims may at any time be presented as provided in RCW 11.40.070, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 12; 1974 ex.s. c 117 § 37; 1965 c 145 § 11.40.060. Prior: 1917 c 156 § 112; RRS § 1482; prior: Code 1881 § 1472; 1873 p 285 § 159; 1869 p 166 § 665; 1854 p 281 § 84.]

Additional notes found at www.leg.wa.gov

11.40.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(a) The name and address of the claimant;

(b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;

(c) A statement of the facts or circumstances constituting the basis of the claim;

(d) The amount of the claim; and

(e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.40.051 by: (a) Serving on or mailing to, by regular first-class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which probate proceedings were commenced. A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.40.051, the personal representative may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid is the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 7; 1997 c 252 § 13; 1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

Additional notes found at www.leg.wa.gov

11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The personal representative shall allow or reject all claims presented in the manner provided in RCW 11.40.070. The personal representative may allow or reject a claim in whole or in part.

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(2) If the personal representative has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors or thirty days from presentation of the claim, the claimant may serve written notice on the personal representative that the claimant will petition the court to have the claim allowed. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within twenty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the estate. [1997 c 252 § 14; 1994 c 221 § 29; 1988 c 64 § 22; 1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

Additional notes found at www.leg.wa.gov

11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims. (1) If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first-class mail to the address stated on the claim.

(2) A claim that on its face does not exceed one thousand dollars presented in the manner provided in RCW 11.40.070 must be deemed allowed and may not thereafter be rejected unless the personal representative has notified the claimant of rejection of the claim within the later of six months from the date of first publication of the notice to creditors and two months from the personal representative's receipt of the claim. The personal representative may petition for an order extending the period for automatic allowance of the claims.

(3) Allowed claims must be ranked among the acknowledged debts of the estate to be paid expeditiously in the course of administration.

(4) A claim may not be allowed if it is barred by a statute of limitations. [1997 c 252 § 15; 1965 c 145 § 11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

Additional notes found at www.leg.wa.gov

11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim. (1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or

not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate. [1997 c 252 § 16; 1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

Additional notes found at www.leg.wa.gov

11.40.110 Action pending at decedent's death—Personal representative as defendant. If an action is pending against the decedent at the time of the decedent's death, the plaintiff shall, within four months after appointment of the personal representative, serve on the personal representative a petition to have the personal representative substituted as defendant in the action. Upon hearing on the petition, the personal representative shall be substituted, unless, at or before the hearing, the claim of the plaintiff, together with costs, is allowed. [1997 c 252 § 17; 1974 ex.s. c 117 § 38; 1965 c 145 § 11.40.110. Prior: 1917 c 156 § 117; RRS § 1487; prior: Code 1881 § 1477; 1854 p 282 § 89.]

Rules of court: *SPR 98.08W.*

Additional notes found at www.leg.wa.gov

11.40.120 Effect of judgment against personal representative. The effect of any judgment rendered against a personal representative shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 18; 1965 c 145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

Additional notes found at www.leg.wa.gov

11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented in the manner provided in RCW 11.40.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the personal representative for any surplus. [1997 c 252 § 19; 1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

Additional notes found at www.leg.wa.gov

11.40.135 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.40.070. [1997 c 252 § 20.]

Additional notes found at www.leg.wa.gov

11.40.140 Claim of personal representative—Presentation and petition—Filing. If the personal representative has a claim against the decedent, the personal representative must present the claim in the manner provided in RCW 11.40.070 and petition the court for allowance or rejection. The petition must be filed under RCW 11.96A.080. This section applies whether or not the personal representative is acting under nonintervention powers. [1999 c 42 § 608; 1997 c

252 § 21; 1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

Additional notes found at www.leg.wa.gov

11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy. (1) If a personal representative has given notice under RCW 11.40.020 and then resigns, dies, or is removed, the successor personal representative shall:

(a) Publish notice of the vacancy and succession for two successive weeks in the legal newspaper in which notice was published under RCW 11.40.020 if the vacancy occurred within twenty-four months after the decedent's date of death; and

(b) Provide actual notice of the vacancy and succession to a creditor if: (i) The creditor filed a claim and the claim had not been accepted or rejected by the prior personal representative; or (ii) the creditor's claim was rejected and the vacancy occurred within thirty days after rejection of the claim.

(2) The time between the resignation, death, or removal and first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four month self-executing bar under RCW 11.40.051. [1997 c 252 § 22; 1965 c 145 § 11.40.150. Prior: 1939 c 26 § 1; 1917 c 156 § 121; RRS § 1491; prior: 1891 c 155 § 28; Code 1881 § 1485; 1873 p 288 § 172; 1867 p 106 § 3.]

Additional notes found at www.leg.wa.gov

11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties. If a notice agent had commenced nonprobate notice to creditors under chapter 11.42 RCW, the appointment of the personal representative does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent. The personal representative is presumed to have adopted or ratified all acts of the notice agent unless, within thirty days of appointment, the personal representative provides notice of rejection or nullification to the affected claimant or claimants by personal service or certified mail addressed to the claimant or claimant's agent, if applicable, at the address stated on the claim. The personal representative shall also provide notice under RCW 11.42.150. [1997 c 252 § 23.]

Additional notes found at www.leg.wa.gov

11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that

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such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 31.]

Chapter 11.42 RCW

SETTLEMENT OF CREDITOR CLAIMS FOR ESTATES PASSING WITHOUT PROBATE

Sections

11.42.010	Notice agent—Qualifications.
11.42.020	Notice to creditors—Manner—Filings—Publication.
11.42.030	Notice to creditors—Form.
11.42.040	"Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.
11.42.050	Claims against decedent—Time limits.
11.42.060	Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.
11.42.070	Claims—Form—Manner of presentation—Waiver of defects.
11.42.080	Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
11.42.085	Property liable for claims—Payment limits.
11.42.090	Allowance of claims—Notice—Payment order.
11.42.100	Rejection of claim—Time limits—Notice—Time limit for suit—Compromise of claim.
11.42.110	Effect of judgment against notice agent.
11.42.120	Execution barred upon decedent's death—Presentation—Sale of property.
11.42.125	Secured claim—Creditor's right.
11.42.130	Claim of notice agent or beneficiary—Payment.
11.42.140	Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy.
11.42.150	Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent.
11.42.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.42.010 Notice agent—Qualifications. (1) Subject to the conditions stated in this chapter, and if no personal representative has been appointed in this state, a beneficiary or trustee who has received or is entitled to receive by reason of the decedent's death substantially all of the decedent's probate and nonprobate assets, is qualified to give nonprobate notice to creditors under this chapter.

If no one beneficiary or trustee has received or is entitled to receive substantially all of the assets, then those persons, who in the aggregate have received or are entitled to receive substantially all of the assets, may, under an agreement under RCW 11.96A.220, appoint a person who is then qualified to give nonprobate notice to creditors under this chapter.

(2) A person or group of persons is deemed to have received substantially all of the decedent's probate and nonprobate assets if the person or the group, at the time of the filing of the declaration and oath referred to in subsection (3) of this section, in reasonable good faith believed that the person or the group had received, or was entitled to receive by reason of the decedent's death, substantially all of the decedent's probate and nonprobate assets.

(3)(a) The "notice agent" means the qualified person who:

(i) Pays a filing fee to the clerk of the superior court in a county in which probate may be commenced regarding the decedent, the "notice county", and receives a cause number; and

(ii) Files a declaration and oath with the clerk.

(b) The declaration and oath must be made in affidavit form or under penalty of perjury and must state that the person making the declaration believes in reasonable good faith that the person is qualified under this chapter to act as the notice agent and that the person will faithfully execute the duties of the notice agent as provided in this chapter.

(4) The following persons are not qualified to act as notice agent:

(a) Corporations, trust companies, and national banks, except: (i) Such entities as are authorized to do trust business in this state; and (ii) professional service corporations that are regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys;

(b) Minors;

(c) Persons of unsound mind;

(d) Persons who have been convicted of a felony or of a misdemeanor involving moral turpitude; and

(e) Persons who have given notice under this chapter and who thereafter become of unsound mind or are convicted of a felony or misdemeanor involving moral turpitude. This disqualification does not bar another person, otherwise qualified, from acting as successor notice agent.

(5) A nonresident may act as notice agent if the nonresident appoints an agent who is a resident of the notice county or who is attorney of record for the notice agent upon whom service of all papers may be made. The appointment must be made in writing and filed with the court. [1999 c 42 § 609; 1997 c 252 § 24; 1994 c 221 § 31.]

Additional notes found at www.leg.wa.gov

11.42.020 Notice to creditors—Manner—Filings—Publication. (1) Subject to subsection (2) of this section, a notice agent may give nonprobate notice to the creditors of the decedent if:

(a) As of the date of the filing of the notice to creditors with the court, the notice agent has no knowledge of another person acting as notice agent or of the appointment of a personal representative in the decedent’s estate in the state of Washington; and

(b) According to the records of the court as are available on the date of the filing of the notice to creditors, no cause number regarding the decedent has been issued to any other notice agent and no personal representative of the decedent’s estate had been appointed.

(2) The notice agent must give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.42.030, announcing that the notice agent has elected to give nonprobate notice to creditors and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.42.050 or be forever barred as to claims against the decedent’s probate and nonprobate assets.

(a) The notice agent shall file the notice with the court.

(b) The notice agent shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the notice county.

(c) The notice agent may at any time give actual notice to creditors who become known to the notice agent by serving the notice on the creditor or mailing the notice to the creditor

at the creditor’s last known address, by regular first-class mail, postage prepaid.

(d) The notice agent shall also mail a copy of the notice, including the decedent’s social security number, to the state of Washington department of social and health services’ office of financial recovery.

(e) If the decedent was a resident of the state of Washington at the time of death and the notice agent’s declaration and oath were filed in a county other than the county of the decedent’s residence, then instead of the requirements in (a) and (b) of this subsection, the notice agent shall cause the notice to creditors in substantially the form set forth in RCW 11.42.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent’s residence and shall file the notice with the superior court of the county in which the notice agent’s declaration and oath were filed.

The notice agent shall file with the court proof by affidavit of the giving and publication of the notice. [2005 c 97 § 8; 1997 c 252 § 25; 1995 1st sp.s. c 18 § 59; 1994 c 221 § 32.]

Additional notes found at www.leg.wa.gov

11.42.030 Notice to creditors—Form. Notice under RCW 11.42.020 must contain the following elements in substantially the following form:

)	
CAPTION	)	No.
OF CASE	)	NONPROBATE
	)	NOTICE TO CREDITORS
	)	RCW 11.42.030
.....)	

The notice agent named below has elected to give notice to creditors of the above-named decedent. As of the date of the filing of a copy of this notice with the court, the notice agent has no knowledge of any other person acting as notice agent or of the appointment of a personal representative of the decedent’s estate in the state of Washington. According to the records of the court as are available on the date of the filing of this notice with the court, a cause number regarding the decedent has not been issued to any other notice agent and a personal representative of the decedent’s estate has not been appointed.

Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.42.070 by serving on or mailing to the notice agent or the notice agent’s attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the notice agent’s declaration and oath were filed. The claim must be presented within the later of: (1) Thirty days after the notice agent served or mailed the notice to the creditor as provided under RCW 11.42.020(2)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.42.050 and 11.42.060. This bar is effective as to claims against both the decedent’s probate and nonprobate assets.

Date of First
Publication:

The notice agent declares under penalty of perjury under the laws of the state of Washington on _____, [year], at _____ [city], _____ [state] that the foregoing is true and correct.

.....
Signature of Notice Agent

Notice Agent:

Attorney for the Notice Agent:

Address for Mailing or Service:

Court of Notice Agent's oath and declaration and cause number:

[2005 c 97 § 9; 1997 c 252 § 26; 1994 c 221 § 33.]

Additional notes found at www.leg.wa.gov

11.42.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.42.050, a "reasonably ascertainable" creditor of the decedent is one that the notice agent would discover upon exercise of reasonable diligence. The notice agent is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, check-books, bank statements, and income tax returns, that are in the possession of or reasonably available to the notice agent.

(2) If the notice agent conducts the review, the notice agent is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.42.050. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The notice agent may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The notice agent may petition the court for an order declaring that the notice agent has made a review and that any creditors not known to the notice agent are not reasonably ascertainable. The petition must be filed under RCW 11.96A.080, and the notice specified under RCW 11.96A.110 must also be given by publication. [1999 c 42 § 610; 1997 c 252 § 27; 1994 c 221 § 34.]

Additional notes found at www.leg.wa.gov

11.42.050 Claims against decedent—Time limits. (1) If a notice agent provides notice under RCW 11.42.020, any person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.42.070 within the following time limitations:

(a) If the notice agent provided notice under RCW 11.42.020(2) (a) and (b) and the creditor was given actual notice as provided in RCW 11.42.020(2)(c), the creditor must

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present the claim within the later of: (i) Thirty days after the notice agent's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the notice agent provided notice under RCW 11.42.020(2) (a) and (b) and the creditor was not given actual notice as provided in RCW 11.42.020(2)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.42.040, the creditor must present the claim within four months after the date of first publication of the notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.42.040, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) Any otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [1997 c 252 § 28; 1994 c 221 § 35.]

Additional notes found at www.leg.wa.gov

11.42.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits. The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.42.050, but the amount of recovery cannot exceed the amount of the insurance. If a notice agent provides notice under RCW 11.42.020, the claims may at any time be presented as provided in RCW 11.42.070, subject to the otherwise relevant statutes of limitations, and does not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the transfer or distribution of the decedent's assets. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 29; 1994 c 221 § 36.]

Additional notes found at www.leg.wa.gov

11.42.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(a) The name and address of the claimant;

(b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;

(c) A statement of the facts or circumstances constituting the basis of the claim;

(d) The amount of the claim; and

(e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.42.050 by: (a) Serving on or mailing to, by regular first-class mail, the notice agent or the notice agent's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which the notice agent's declaration and oath were filed. A claim is deemed presented upon the later of the date of postmark or service on the notice agent, or the notice agent's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.42.050, the notice agent may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid was the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 10; 1997 c 252 § 30; 1994 c 221 § 37.]

Additional notes found at www.leg.wa.gov

11.42.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The notice agent shall allow or reject all claims presented in the manner provided in RCW 11.42.070. The notice agent may allow or reject a claim, in whole or in part.

(2) If the notice agent has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors and thirty days from presentation of the claim, the claimant may serve written notice on the notice agent that the claimant will petition the court to have the claim allowed. If the notice agent fails to notify the claimant of the allowance or rejection of the claim within twenty days after the notice agent's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the decedent's assets received by the notice agent or by those appointing the notice agent. [1997 c 252 § 31; 1994 c 221 § 38.]

Additional notes found at www.leg.wa.gov

11.42.085 Property liable for claims—Payment limits. (1) The decedent's nonprobate and probate assets that were subject to the satisfaction of the decedent's general liabilities immediately before the decedent's death are liable for claims. The decedent's probate assets may be liable, whether or not there is a probate administration of the decedent's estate.

(2) The notice agent may pay a claim allowed by the notice agent or a judgment on a claim first prosecuted against a notice agent only out of assets received as a result of the death of the decedent by the notice agent or by those appointing the notice agent, except as may be provided by agreement under RCW 11.96A.220 or by court order issued in a judicial proceeding under RCW 11.96A.080. [1999 c 42 § 611; 1997 c 252 § 32.]

Additional notes found at www.leg.wa.gov

11.42.090 Allowance of claims—Notice—Payment order. (1) If the notice agent allows a claim, the notice agent shall notify the claimant of the allowance by personal service or regular first-class mail to the address stated on the claim. A claim may not be allowed if it is barred by a statute of limitations.

(2) The notice agent shall pay claims allowed in the following order from the assets of the decedent that are subject to the payment of claims as provided in RCW 11.42.085:

(a) Costs of administering the assets subject to the payment of claims, including a reasonable fee to the notice agent, any resident agent for the notice agent, reasonable attorneys' fees for the attorney for each of them, filing fees, publication costs, mailing costs, and similar costs and fees;

(b) Funeral expenses in a reasonable amount;

(c) Expenses of the last sickness in a reasonable amount;

(d) Wages due for labor performed within sixty days immediately preceding the death of the decedent;

(e) Debts having preference by the laws of the United States;

(f) Taxes, debts, or dues owing to the state;

(g) Judgments rendered against the decedent in the decedent's lifetime that are liens upon real estate on which executions might have been issued at the time of the death of the decedent and debts secured by mortgages in the order of their priority; and

(h) All other demands against the assets subject to the payment of claims.

(3) The notice agent may not pay a claim of the notice agent or other person who has received property by reason of the decedent's death unless all other claims that have been filed under this chapter, and all debts having priority to the claim, are paid in full or otherwise settled by agreement, regardless of whether the other claims are allowed or rejected. [1997 c 252 § 33; 1994 c 221 § 39.]

Additional notes found at www.leg.wa.gov

11.42.100 Rejection of claim—Time limits—Notice—Time limit for suit—Compromise of claim. (1) If the notice agent rejects a claim, in whole or in part, the claimant must bring suit against the notice agent within thirty days after notification of rejection or the claim is forever barred. The notice agent shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The notice agent shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the notice agent within thirty days after notification of rejection or the claim will be forever barred.

(2) If a claimant brings suit against the notice agent on a rejected claim and the notice agent has not received substantially all assets of the decedent that are liable for claims, the notice agent may only make an appearance in the action and may not answer the action but must cause a petition to be filed for the appointment of a personal representative within thirty days after service of the creditor's action on the notice agent. Under these circumstances, a judgment may not be entered in an action brought by a creditor against the notice

agent earlier than twenty days after the personal representative has been substituted in that action for the notice agent.

(3) The notice agent may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated. [1997 c 252 § 34; 1994 c 221 § 40.]

Additional notes found at www.leg.wa.gov

11.42.110 Effect of judgment against notice agent.

The effect of a judgment rendered against the notice agent shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 35; 1994 c 221 § 41.]

Additional notes found at www.leg.wa.gov

11.42.120 Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. If a notice agent is acting, the judgment must be presented in the manner provided in RCW 11.42.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the notice agent for any surplus. [1997 c 252 § 36; 1994 c 221 § 42.]

Additional notes found at www.leg.wa.gov

11.42.125 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of the creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.42.070. [1997 c 252 § 37.]

Additional notes found at www.leg.wa.gov

11.42.130 Claim of notice agent or beneficiary—Payment. A claim of the notice agent or other person who has received property by reason of the decedent's death must be paid as set forth in RCW 11.42.090(3). [1997 c 252 § 38; 1994 c 221 § 43.]

Additional notes found at www.leg.wa.gov

11.42.140 Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy. (1) If a notice agent has given notice under RCW 11.42.020 and the notice agent resigns, dies, or is removed or a personal representative is appointed, the successor notice agent or the personal representative shall:

(a) Publish notice of the vacancy and succession for two successive weeks in the legal newspaper in which notice was published under RCW 11.42.020, if the vacancy occurred within twenty-four months after the decedent's date of death; and

(b) Provide actual notice of the vacancy and succession to a creditor if: (i) The creditor filed a claim and the claim had not been allowed or rejected by the prior notice agent; or (ii) the creditor's claim was rejected and the vacancy occurred within thirty days after rejection of the claim.

(2) The time between the resignation, death, or removal of the notice agent or appointment of a personal representative and the first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of

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vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four-month self-executing bar under RCW 11.42.050. [1997 c 252 § 39; 1994 c 221 § 45.]

Additional notes found at www.leg.wa.gov

11.42.150 Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent. (1) The powers and authority of a notice agent immediately cease, and the office of notice agent becomes vacant, upon appointment of a personal representative for the estate of the decedent. Except as provided in RCW 11.42.140(2), the cessation of the powers and authority does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent.

(2) As set forth in RCW 11.40.160, a personal representative may adopt, ratify, nullify, or reject any actions of the notice agent.

(3) If a personal representative is appointed and the personal representative does not nullify the allowance of a claim that the notice agent allowed and paid, the person or persons whose assets were used to pay the claim may petition for reimbursement from the estate to the extent the payment was not in accordance with chapter 11.10 RCW. [1997 c 252 § 40; 1994 c 221 § 44.]

Additional notes found at www.leg.wa.gov

11.42.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 32.]

Chapter 11.44 RCW

INVENTORY AND APPRAISEMENT

Sections

11.44.015	Inventory and appraisalment—Filing—Copy distribution.
11.44.025	Additional inventory and appraisalment—Copy distribution.
11.44.035	Inventory and appraisalment may be contradicted or avoided.
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11.44.090	Discharge of debt—Specific bequest and inclusion in inventory and appraisalment.

Partnerships, inventory and appraisalment: RCW 11.64.002.

11.44.015 Inventory and appraisal—Filing—Copy distribution. (1) Within three months after appointment, unless a longer time shall be granted by the court, every personal representative shall make and verify by affidavit a true inventory and appraisal of all of the property of the estate passing under the will or by laws of intestacy and which shall have come to the personal representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges on the item. Such property shall be classified as follows:

- (a) Real property, by legal description;
- (b) Stocks and bonds;
- (c) Mortgages, notes, and other written evidences of debt;
- (d) Bank accounts and money;
- (e) Furniture and household goods;
- (f) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative.

(2) The inventory and appraisal may, but need not be, filed in the probate cause, but upon receipt of a written request for a copy of the inventory and appraisal from any heir, legatee, devisee, unpaid creditor who has filed a claim, or beneficiary of a nonprobate asset from whom contribution is sought under RCW 11.18.200, or from the department of revenue, the personal representative shall furnish to the person, within ten days of receipt of a request, a true and correct copy of the inventory and appraisal. [1997 c 252 § 41; 1967 c 168 § 9; 1965 c 145 § 11.44.015. Formerly RCW 11.44.010, part and 11.44.020, part.]

Inventory and appraisal on death of partner—Filing: RCW 11.64.002.

Additional notes found at www.leg.wa.gov

11.44.025 Additional inventory and appraisal—Copy distribution. Whenever any property of the estate not mentioned in the inventory and appraisal comes to the knowledge of a personal representative, the personal representative shall cause the property to be inventoried and appraised and shall make and verify by affidavit a true inventory and appraisal of the property within thirty days after the discovery thereof, unless a longer time shall be granted by the court, and shall provide a copy of the inventory and appraisal to every person who has properly requested a copy of the inventory and appraisal under RCW 11.44.015(2). [1997 c 252 § 42; 1974 ex.s. c 117 § 48; 1965 c 145 § 11.44.025. Prior: 1917 c 156 § 100; RCW 11.44.060; RRS § 1470; prior: Code 1881 § 1453; 1873 p 281 § 138; 1854 p 277 § 64.]

Additional notes found at www.leg.wa.gov

11.44.035 Inventory and appraisal may be contradicted or avoided. In an action against the personal representative where the administration of the estate, or any part thereof, is put in issue and the inventory and appraisal of the estate by the personal representative is given in evidence, the same may be contradicted or avoided by evidence. Any

party in interest in the estate may challenge the inventory and appraisal at any stage of the probate proceedings. [1997 c 252 § 43; 1965 c 145 § 11.44.035. Prior: Code 1881 § 721; 1877 p 146 § 725; 1869 p 166 § 662; RCW 11.48.170; RRS § 970.]

Additional notes found at www.leg.wa.gov

11.44.050 Inventory and appraisal—Failure to return or provide copy—Revocation of letters. If any personal representative shall neglect or refuse to make the inventory and appraisal within the period prescribed, or within such further time as the court may allow, or to provide a copy as provided under RCW 11.44.015, 11.44.025, or 11.44.035, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his or her bond to any party interested for the injury sustained by the estate through his or her neglect. [1997 c 252 § 44; 1965 c 145 § 11.44.050. Prior: 1917 c 156 § 99; RRS § 1469; prior: Code 1881 § 1457; 1873 p 281 § 138; 1854 p 278 § 69.]

Additional notes found at www.leg.wa.gov

11.44.070 Persons assisting in appraisal—Compensation—Refund. The personal representative may employ a qualified and disinterested person to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The amount of the fee to be paid to any persons assisting the personal representative in any appraisal shall be determined by the personal representative: PROVIDED HOWEVER, That the reasonableness of any such compensation shall, at the time of hearing on any final account as provided in chapter 11.76 RCW or on a request or petition under RCW 11.68.100 or 11.68.110, be reviewed by the court in accordance with the provisions of RCW 11.68.100, and if the court determines the compensation to be unreasonable, a personal representative may be ordered to make appropriate refund. [1997 c 252 § 45; 1974 ex.s. c 117 § 50; 1967 c 168 § 10; 1965 c 145 § 11.44.070. Formerly RCW 11.44.010, part.]

Additional notes found at www.leg.wa.gov

11.44.085 Claims against personal representative included. The naming or the appointment of any person as personal representative shall not operate as a discharge from any just claim which the testator or intestate had against the personal representative, but the claim shall be included in the inventory and appraisal and the personal representative shall be liable to the same extent as the personal representative would have been had he or she not been appointed personal representative. [1997 c 252 § 46; 1965 c 145 § 11.44.085. Prior: 1917 c 156 § 97; RCW 11.44.030; RRS § 1467; prior: Code 1881 § 1449; 1860 p 63 § 5; 1854 p 277 § 60.]

Additional notes found at www.leg.wa.gov

11.44.090 Discharge of debt—Specific bequest and inclusion in inventory and appraisal. The discharge or bequest in a will of any debt or demand of the testator against any executor named in the testator's will or against any per-

son shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory and appraisal, and shall, if necessary, be applied in payment of the testator's debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies. [1997 c 252 § 47; 1965 c 145 § 11.44.090. Prior: 1917 c 156 § 98; RCW 11.44.040; RRS § 1468; prior: Code 1881 § 1450; 1854 p 277 § 61.]

Additional notes found at www.leg.wa.gov

Chapter 11.48 RCW
PERSONAL REPRESENTATIVES—
GENERAL PROVISIONS—
ACTIONS BY AND AGAINST

Sections

- 11.48.010 General powers and duties.
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- 11.48.130 Compromise of claims.
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- 11.48.200 Arrest and attachment, when, authorized.
- 11.48.210 Compensation—Attorney's fees.

Rules of court: Executors

compromises and settlements: SPR 98.08W, 98.10W.
fees, application for, notice: SPR 98.12W.

Costs against fiduciaries: RCW 4.84.150.

District judge without jurisdiction as to actions against personal representative: RCW 3.66.030.

Ejectment and quieting title: Chapter 7.28 RCW.

Evidence, transaction with person since deceased: RCW 5.60.030.

Execution of writ—Levy: RCW 6.17.130.

Execution on judgments in name of personal representative: RCW 6.17.030.

Executor, administrator, subject to garnishment: RCW 6.27.050.

Fiduciary may sue in own name: Rules of court: CR 17.

Frauds, statute of, agreement of personal representative to answer damages from own estate: RCW 19.36.010.

Investment in certain federal securities authorized: Chapter 39.60 RCW.

Judgment against executor, administrator, effect: RCW 4.56.050.

Larceny: RCW 9A.56.100.

Limitation of actions

against executor, administrator for misconduct: RCW 4.16.110.
generally: Chapter 4.16 RCW.

recovery of realty sold by personal representative: RCW 4.16.070.
statutes tolled by death, personal disability, reversal of judgment: RCW 4.16.190, 4.16.200, 4.16.240.

Real estate broker's license requirement, exemption: RCW 18.85.151.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Setoff, by and against executors, administrators: RCW 4.32.130, 4.32.140, 4.56.050.

Survival of actions: Chapter 4.20 RCW.

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"Taxable person," personal representative defined as: RCW 82.04.030.

Unknown heirs, pleading, lis pendens, etc: RCW 4.28.140 through 4.28.160;
Rules of court: CR 10.

Witnesses, competency in actions involving representatives or fiduciaries: RCW 5.60.030.

11.48.010 General powers and duties. It shall be the duty of every personal representative to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate. The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character. [1994 c 221 § 30; 1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

Additional notes found at www.leg.wa.gov

11.48.020 Right to possession and management of estate. Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenable repair all houses, buildings and fixtures thereon, which are under his or her control. [2010 c 8 § 2030; 1965 c 145 § 11.48.020. Prior: 1917 c 156 § 94; RRS § 1464; prior: Code 1881 § 1444; 1860 p 189 § 132; 1854 p 278 § 65.]

When title vests: RCW 11.04.250.

11.48.025 Continuation of decedent's business. Upon a showing of advantage to the estate the court may authorize a personal representative to continue any business of the decedent, other than the business of a partnership of which the decedent was a member: PROVIDED, That if decedent left a nonintervention will or a will specifically authorizing a personal representative to continue any business of decedent, and his or her estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

The order shall specify:

- (1) The extent of the authority of the personal representative to incur liabilities;
- (2) The period of time during which he or she may operate the business;
- (3) Any additional provisions or restrictions which the court may, at its discretion, include.

Any interested person may for good cause require the personal representative to show cause why the authority granted him or her should not be limited or terminated. The order to show cause shall set forth the manner of service thereof and the time and place of hearing thereon. [2010 c 8 § 2031; 1965 c 145 § 11.48.025. Prior: 1955 c 98 § 1.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.48.030 Chargeable with whole estate. Every personal representative shall be chargeable in his or her accounts with the whole estate of the deceased which may come into his or her possession. He or she shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his or her fault. [2010 c 8 § 2032; 1965 c 145 § 11.48.030. Prior: 1917 c 156 § 155; RRS § 1525; prior: Code 1881 § 1538; 1860 p 210 § 241; 1854 p 295 § 161.]

11.48.040 Not chargeable on special promise to pay decedent's debts unless in writing. No personal representative shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his or her own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such personal representative, or by some other person by him or her thereunto specially authorized. [2010 c 8 § 2033; 1965 c 145 § 11.48.040. Prior: 1917 c 156 § 154; RRS § 1524; prior: Code 1881 § 1537; 1854 p 295 § 160.]

Agreement to answer damages from own estate must be in writing: RCW 19.36.010.

11.48.050 Allowance of necessary expenses. He or she shall be allowed all necessary expenses in the care, management, and settlement of the estate. [2010 c 8 § 2034; 1965 c 145 § 11.48.050. Prior: 1917 c 156 § 156; RRS § 1526; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: *SPR 98.12W.*

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

Broker's fee and closing expenses—Sale, mortgage or lease: RCW 11.56.265.

Compensation—Attorney's fee: RCW 11.48.210.

Monument, expense of: RCW 11.76.130.

Order of payment of debts: RCW 11.76.110.

Will contests, costs: RCW 11.24.050.

11.48.060 May recover for embezzled or alienated property of decedent. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he or she shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate. [2010 c 8 § 2035; 1965 c 145 § 11.48.060. Prior: 1917 c 156 § 101; RRS § 1471; prior: Code 1881 § 1455; 1854 p 278 § 67.]

Larceny: RCW 9A.56.100.

11.48.070 Concealed or embezzled property—Proceedings for discovery. The court shall have authority to bring before it any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed, or disposed of any of the property of the estate of decedents or incompetents subject to administration under this title, or who has in his or her possession or within his or

her knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest, or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he or she may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he or she be found innocent of the charges he or she shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorney's fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he or she refuses to answer such interrogatories as may be put to him or her touching such matters, the court may commit him or her to the county jail, there to remain until he or she shall be willing to make such answers. [2010 c 8 § 2036; 1965 c 145 § 11.48.070. Prior: 1917 c 156 § 102; RRS § 1472; prior: 1891 p 385 §§ 22, 23; Code 1881 §§ 1456, 1457; 1854 p 278 §§ 68, 69.]

Guardianship—Concealed or embezzled property—Proceedings for discovery: RCW 11.92.185.

Larceny: RCW 9A.56.100.

11.48.080 Uncollectible debts—Liability—Purchase of claims by personal representative. No personal representative shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his or her fault. No personal representative shall purchase any claim against the estate he or she represents, but the personal representative may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the personal representative under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the personal representative shall not profit thereby. [2010 c 8 § 2037; 1965 c 145 § 11.48.080. Prior: 1917 c 156 § 157; RRS § 1527; prior: Code 1881 § 1540; 1854 p 295 § 163.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.48.090 Actions for recovery of property and on contract. Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates. [1965 c 145 § 11.48.090. Prior: 1917 c 156 § 148; RRS § 1518; prior: Code 1881 § 1529; 1860 p 206 § 222; 1854 p 291 § 142.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Survival of actions: Chapter 4.20 RCW.

11.48.120 Action on bond of previous personal representative. Any personal representative may in his or her own name, for the benefit of all parties interested in the estate, maintain actions on the bond of a former personal representative of the same estate. [2010 c 8 § 2038; 1965 c 145 § 11.48.120. Prior: 1917 c 156 § 151; RRS § 1521; prior: Code 1881 § 1532; 1854 p 291 § 145.]

11.48.130 Compromise of claims. The court may authorize the personal representative, without the necessary nonintervention powers, to compromise and compound any claim owing the estate. Unless the court has restricted the power to compromise or compound claims owing to the estate, a personal representative with nonintervention powers may compromise and compound a claim owing the estate without the intervention of the court. [1997 c 252 § 58; 1965 c 145 § 11.48.130. Prior: 1917 c 156 § 152; RRS § 1522; prior: Code 1881 § 1533; 1854 p 291 § 146.]

Rules of court: *SPR 98.08W.*

Additional notes found at www.leg.wa.gov

11.48.140 Recovery of decedent's fraudulent conveyances. When there shall be a deficiency of assets in the hands of a personal representative, and when the deceased shall in his or her lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his or her creditors or to avoid any right, duty, or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the personal representative may, and it shall be his or her duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, and credits which may have been so fraudulently conveyed by the deceased in his or her lifetime, whatever may have been the manner of such fraudulent conveyance. [2010 c 8 § 2039; 1965 c 145 § 11.48.140. Prior: 1917 c 156 § 153; prior: Code 1881 § 1534; 1854 p 291 § 147.]

11.48.150 Several personal representatives considered as one. In an action against several personal representatives, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action. [1965 c 145 § 11.48.150. Prior: Code 1881 § 719; 1877 p 146 § 723; 1869 p 165 § 660; RRS § 968.]

11.48.160 Default judgment not evidence of assets—Exception. When a judgment is given against a personal representative for want of answer, such judgment is not to be deemed evidence of assets in his or her hands, unless it appear that the complaint alleged assets and that the notice was served upon him or her. [2010 c 8 § 2040; 1965 c 145 § 11.48.160. Prior: Code 1881 § 720; 1877 p 146 § 724; 1869 p 166 § 661; RRS § 969.]

11.48.180 Liability of executor de son tort. No person is liable to an action as executor of his or her own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his or her interference with the estate of the deceased. [2010 c 8 § 2041; 1965 c 145 § 11.48.180. Prior: Code 1881 § 722; 1877 p 146 § 726; 1869 p 166 § 663; RRS § 971.]

(2012 Ed.)

11.48.190 Executor of executor may not sue for estate of first testator. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof. [1965 c 145 § 11.48.190. Prior: Code 1881 § 723; 1877 p 147 § 727; 1869 p 166 § 664; RRS § 972.]

Administrator with will annexed on death of executor: *RCW 11.28.060.*

11.48.200 Arrest and attachment, when, authorized. In an action against a personal representative as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his or her testator or intestate, but for his or her own acts as such personal representative, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally. [2010 c 8 § 2042; 1965 c 145 § 11.48.200. Prior: Code 1881 § 724; 1877 p 147 § 729; 1869 p 167 § 666; RRS § 973.]

11.48.210 Compensation—Attorney's fees. If testator by will makes provision for the compensation of his or her personal representative, that shall be taken as his or her full compensation unless he or she files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he or she renounces all claim to the compensation provided in the will, shall be allowed such compensation for his or her services as the court shall deem just and reasonable. Additional compensation may be allowed for his or her services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his or her attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees. If the court finds that the personal representative has failed to discharge his or her duties as such in any respect, it may deny him or her any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [2010 c 8 § 2043; 1965 c 145 § 11.48.210. Prior: 1917 c 156 § 158; RRS § 1528; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: *SPR 98.12W.*

Allowance of necessary expenses: *RCW 11.48.050.*

Will contests, costs: *RCW 11.24.050.*

Chapter 11.54 RCW

FAMILY SUPPORT AND POSTDEATH CREDITOR'S CLAIM EXEMPTIONS

Sections

11.54.010	Award to surviving spouse, domestic partner, or children—Petition.
11.54.020	Amount of basic award.
11.54.030	Conditions to award.
11.54.040	Increase in amount of award—Factors for consideration.
11.54.050	Decrease in amount of award—Factors for consideration.
11.54.060	Priority of awarded property—Effect of purchase or encumbrance on property.

- 11.54.070 Immunity of award from debts and claims of creditors.
 11.54.080 Exemption of additional assets from claims of creditors—Petition—Notice—Court order.
 11.54.090 Venue for petition—Petition and hearing requirements—Notice of hearing.
 11.54.100 Exhaustion of estate—Closure of estate—Discharge of personal representative.

11.54.010 Award to surviving spouse, domestic partner, or children—Petition. (1) Subject to RCW 11.54.030, the surviving spouse or surviving domestic partner of a decedent may petition the court for an award from the property of the decedent. If the decedent is survived by children of the decedent who are not also the children of the surviving spouse or surviving domestic partner, on petition of such a child the court may divide the award between the surviving spouse or surviving domestic partner and all or any of such children as it deems appropriate. If there is not a surviving spouse or surviving domestic partner, the minor children of the decedent may petition for an award.

(2) The award may be made from either the community property or separate property of the decedent. Unless otherwise ordered by the court, the probate and nonprobate assets of the decedent abate in accordance with chapter 11.10 RCW in satisfaction of the award.

(3) The award may be made whether or not probate proceedings have been commenced in the state of Washington. The court may not make this award unless the petition for the award is filed before the earliest of:

(a) Eighteen months from the date of the decedent's death if within twelve months of the decedent's death either:

- (i) A personal representative has been appointed; or
- (ii) A notice agent has filed a declaration and oath as required in RCW 11.42.010(3)(a)(ii); or

(b) The termination of any probate proceeding for the decedent's estate that has been commenced in the state of Washington; or

(c) Six years from the date of the death of the decedent. [2008 c 6 § 916; 1997 c 252 § 48.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.54.020 Amount of basic award. The amount of the basic award shall be the amount specified in RCW 6.13.030(2) with regard to lands. If an award is divided between a surviving spouse or surviving domestic partner and the decedent's children who are not the children of the surviving spouse or surviving domestic partner, the aggregate amount awarded to all the claimants under this section shall be the amount specified in RCW 6.13.030(2) with respect to lands. The amount of the basic award may be increased or decreased in accordance with RCW 11.54.040 and 11.54.050. [2008 c 6 § 917; 1997 c 252 § 49.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.54.030 Conditions to award. (1) The court may not make an award unless the court finds that the funeral expenses, expenses of last sickness, and expenses of administration have been paid or provided for.

(2) The court may not make an award to a surviving spouse or surviving domestic partner or child who has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent. [2008 c 6 § 918; 1997 c 252 § 50.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.54.040 Increase in amount of award—Factors for consideration. (1) If it is demonstrated to the satisfaction of the court with clear, cogent, and convincing evidence that a claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in the state of Washington with respect to basic maintenance and support will not otherwise be provided for from other resources, and that the award would not be inconsistent with the decedent's intentions, the amount of the award may be increased in an amount the court determines to be appropriate.

(2) In determining the needs of the claimant, the court shall consider, without limitation, the resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and nonprobate estate.

(3) In determining the intentions of the decedent, the court shall consider, without limitation:

(a) Provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise;

(b) Provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an increased award;

(c) If the claimant is the surviving spouse or surviving domestic partner, the duration and status of the marriage or the state registered domestic partnership of the decedent to the claimant at the time of the decedent's death;

(d) The effect of any award on the availability of any other resources or benefits to the claimant;

(e) The size and nature of the decedent's estate; and

(f) Oral or written statements made by the decedent that are otherwise admissible as evidence.

The fact that the decedent has named beneficiaries other than the claimant as recipients of the decedent's estate is not of itself adequate to evidence such an intent as would prevent the award of an amount in excess of that provided for in RCW 6.13.030(2) with respect to lands.

(4)(a) A petition for an increased award may only be made if a petition for an award has been granted under RCW 11.54.010. The request for an increased award may be made in conjunction with the petition for an award under RCW 11.54.010.

(b) Subject to (a) of this subsection, a request for an increased award may be made at any time during the pendency of the probate proceedings. A request to modify an increased award may also be made at any time during the pendency of the probate proceedings by a person having an interest in the decedent's estate that will be directly affected by the requested modification. [2008 c 6 § 919; 1997 c 252 § 51.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.54.050 Decrease in amount of award—Factors for consideration. (1) The court may decrease the amount of the award below the amount provided in RCW 11.54.020 in the exercise of its discretion if the recipient is entitled to receive probate or nonprobate property, including insurance, by reason of the death of the decedent. In such a case the award must be decreased by no more than the value of such other property as is received by reason of the death of the decedent. The court shall consider the factors presented in RCW 11.54.040(2) in determining the propriety of the award and the proper amount of the award, if any.

(2) An award to a surviving spouse or surviving domestic partner is also discretionary and the amount otherwise allowable may be reduced if: (a) The decedent is survived by children who are not the children of the surviving spouse or surviving domestic partner and the award would decrease amounts otherwise distributable to such children; or (b) the award would have the effect of reducing amounts otherwise distributable to any of the decedent's minor children. In either case the court shall consider the factors presented in RCW 11.54.040 (2) and (3) and whether the needs of the minor children with respect to basic maintenance and support are and will be adequately provided for, both during and after the pendency of any probate proceedings if such proceedings are pending, considering support from any source, including support from the surviving spouse or surviving domestic partner. [2008 c 6 § 920; 1997 c 252 § 52.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.54.060 Priority of awarded property—Effect of purchase or encumbrance on property. (1) The award has priority over all other claims made in the estate. In determining which assets must be made available to satisfy the award, the claimant is to be treated as a general creditor of the estate, and unless otherwise ordered by the court the assets shall abate in satisfaction of the award in accordance with chapter 11.10 RCW.

(2) If the property awarded is being purchased on contract or is subject to any encumbrance, for purposes of the award the property must be valued net of the balance due on the contract and the amount of the encumbrance. The property awarded will continue to be subject to any such contract or encumbrance, and any award in excess of the basic award under RCW 11.54.010, whether of community property or the decedent's separate property, is not immune from any lien for costs of medical expenses recoverable under RCW 43.20B.080. [1997 c 252 § 53.]

Additional notes found at www.leg.wa.gov

11.54.070 Immunity of award from debts and claims of creditors. (1) Except as provided in RCW 11.54.060(2), property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse or surviving domestic partner existing at the time of death.

(2012 Ed.)

(2) Both the decedent's and the surviving spouse's or surviving domestic partner's interests in any community property awarded to the spouse or domestic partner under this chapter are immune from the claims of creditors. [2008 c 6 § 921; 1998 c 292 § 201; 1997 c 252 § 54.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.54.080 Exemption of additional assets from claims of creditors—Petition—Notice—Court order. (1) This section applies if the party entitled to petition for an award holds exempt property that is in an aggregate amount less than that specified in RCW 6.13.030(2) with respect to lands.

(2) For purposes of this section, the party entitled to petition for an award is referred to as the "claimant." If multiple parties are entitled to petition for an award, all of them are deemed a "claimant" and may petition for an exemption of additional assets as provided in this section, if the aggregate amount of exempt property to be held by all the claimants after the making of the award does not exceed the amount specified in RCW 6.13.030(2) with respect to lands.

(3) A claimant may petition the court for an order exempting other assets from the claims of creditors so that the aggregate amount of exempt property held by the claimants equals the amount specified in RCW 6.13.030(2) with respect to lands. The petition must:

(a) Set forth facts to establish that the petitioner is entitled to petition for an award under RCW 11.54.010;

(b) State the nature and value of those assets then held by all claimants that are exempt from the claims of creditors; and

(c) Describe the nonexempt assets then held by the claimants, including any interest the claimants may have in any probate or nonprobate property of the decedent.

(4) Notice of a petition for an order exempting assets from the claims of creditors must be given in accordance with RCW 11.96A.110.

(5) At the hearing on the petition, the court shall order that certain assets of the claimants are exempt from the claims of creditors so that the aggregate amount of exempt property held by the claimants after the entry of the order is in the amount specified in RCW 6.13.030(2) with respect to lands. In the order the court shall designate those assets of the claimants that are so exempt. [1999 c 42 § 612; 1997 c 252 § 55.]

Additional notes found at www.leg.wa.gov

11.54.090 Venue for petition—Petition and hearing requirements—Notice of hearing. The petition for an award, for an increased or modified award, or for the exemption of assets from the claims of creditors as authorized by this chapter must be made to the court of the county in which the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the decedent was domiciled at the time of death. If the decedent was not domiciled in the state of Washington at the time of death, the petition may be made to the court of any county in which the decedent's estate could be administered under RCW 11.96A.050. The petition and the hearing must conform to RCW 11.96A.080 through 11.96A.200. Notice of the

hearing on the petition must be given in accordance with RCW 11.96A.110. [1999 c 42 § 613; 1997 c 252 § 56.]

Additional notes found at www.leg.wa.gov

11.54.100 Exhaustion of estate—Closure of estate—Discharge of personal representative. If an award provided by this chapter will exhaust the estate, and probate proceedings have been commenced in the state of Washington, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any. [1997 c 252 § 57.]

Additional notes found at www.leg.wa.gov

Chapter 11.56 RCW SALES, EXCHANGES, LEASES, MORTGAGES, AND BORROWING

Sections

11.56.005	Authority to exchange.
11.56.010	Authority to sell, lease or mortgage.
11.56.020	Sale, lease or mortgage of personal property.
11.56.030	Sale, lease or mortgage of real estate—Petition—Notice—Hearing.
11.56.040	Order directing mortgage.
11.56.045	Order directing lease.
11.56.050	Order directing sale.
11.56.060	Public sales—Notice.
11.56.070	Postponement, adjournment of sale—Notice.
11.56.080	Private sales of realty—Notice—Bids.
11.56.090	Minimum price—Private sale—Sale by negotiation—Reappraisal.
11.56.100	Confirmation of sale—Approval—Resale.
11.56.110	Offer of increased bid—Duty of court.
11.56.115	Effect of confirmation.
11.56.120	Conveyance after confirmation of sale.
11.56.180	Sale of decedent's contract interest in land.
11.56.210	Assignment of decedent's contract.
11.56.220	Redemption of decedent's mortgaged estate.
11.56.230	Sale or mortgage to effect redemption.
11.56.240	Sale of mortgaged property if redemption inexpedient.
11.56.250	Sales directed by will.
11.56.265	Broker's fee and closing expenses—Sale, mortgage or lease.
11.56.280	Borrowing on general credit of estate—Petition—Notice—Hearing.

Limitation of actions, recovery of realty sold by executor or administrator: RCW 4.16.070.

Registered land, probate may direct sale or mortgage of: RCW 65.12.590.

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

Sale of property to pay estate and transfer taxes: RCW 83.100.110.

11.56.005 Authority to exchange. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be. [1965 c 145 § 11.56.005.]

11.56.010 Authority to sell, lease or mortgage. The court may order real or personal property sold, leased or mortgaged for the purposes hereinafter mentioned but no

sale, lease or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law. [1965 c 145 § 11.56.010. Prior: 1917 c 156 § 122; RRS § 1492; prior: 1895 c 157 § 1; 1883 p 29 § 1; Code 1881 § 1486; 1854 p 284 § 97.]

11.56.020 Sale, lease or mortgage of personal property. The court may at any time order any personal property, including for purposes of this section a vendor's interest in a contract for the sale of real estate, of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public or private sale or by negotiation and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in RCW 11.28.240, unless the court expressly orders such notice.

Where personal property is sold prior to appraisal, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged, pledged or leased for the same reasons and purposes, and in the same manner as is hereinafter provided for real property. [1965 c 145 § 11.56.020. Prior: (i) 1917 c 156 § 123; RRS § 1493; prior: 1891 c 155 §§ 29, 30; 1883 p 29 § 1; Code 1881 § 1488; 1854 p 284 § 99. (ii) 1955 c 205 § 12; RCW 11.56.025.]

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of decedent's contract interest in land: RCW 11.56.180.

11.56.030 Sale, lease or mortgage of real estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, estate taxes, or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale, lease or mortgage and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale, lease or mortgage need be given, except as provided in RCW 11.28.240 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining

whether it should order any of the property of the estate sold, leased or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale, lease or mortgage, and the court may, if it see fit, order such sale, lease or mortgage without any petition having been previously presented. [1990 c 180 § 2; 1965 c 145 § 11.56.030. Prior: 1937 c 28 § 3; 1917 c 156 § 124; RRS § 1494; prior: Code 1881 § 1493; 1854 p 285 § 103.]

11.56.040 Order directing mortgage. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute and deliver his or her note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage, or other evidence of indebtedness until he or she has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title, and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his or her estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it. [2010 c 8 § 2044; 1965 c 145 § 11.56.040. Prior: 1917 c 156 § 125; RRS § 1495; prior: Code 1881 § 1494; 1854 p 285 § 104.]

11.56.045 Order directing lease. If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he or she has first presented the same to the court and obtained its approval of the form. [2010 c 8 § 2045; 1965 c 145 § 11.56.045.]

11.56.050 Order directing sale. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing the personal representative to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale, or by negotiation. After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate. [1994 c 221 § 49; 1965 c 145 § 11.56.050. Prior: 1917 c 156 § 126; RRS § 1496; prior: Code 1881 § 1494; 1854 p 285 § 104.]

(2012 Ed.)

Abatement of assets: Chapter 11.10 RCW.

Additional notes found at www.leg.wa.gov

11.56.060 Public sales—Notice. When real property is directed to be sold by public sale, notice of the time and place of such sale shall be published in a legal newspaper of the county in which the estate is being administered, once each week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. At the time and place named in such notices for the said sale, the personal representative shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public sale shall be made at the front door of the court house of the county in which the lands are, unless the court shall by order otherwise direct. [1965 c 145 § 11.56.060. Prior: 1917 c 156 § 127; RRS § 1497; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.070 Postponement, adjournment of sale—Notice. The personal representative, should he or she deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation. [2010 c 8 § 2046; 1965 c 145 § 11.56.070. Prior: 1917 c 156 § 128; RRS § 1498; prior: Code 1881 § 1505; 1854 p 287 § 115.]

11.56.080 Private sales of realty—Notice—Bids. When a sale of real property is ordered to be made at private sale, notice of the same must be published in a legal newspaper of the county in which the estate is being administered, once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but if made, must be made within twelve months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the personal representative personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide

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that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [1965 c 145 § 11.56.080. Prior: 1917 c 156 § 129; RRS § 1499; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.090 Minimum price—Private sale—Sale by negotiation—Reappraisal. No sale of real estate at private sale or sale by negotiation shall be confirmed by the court unless the gross sum offered is at least ninety percent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisal is too high or too low, appraisers may be appointed, and they must make an appraisal thereof in the same manner as in the case of the original appraisal of the estate, and which appraisal may be made at any time before the sale or the confirmation thereof. [1965 c 145 § 11.56.090. Prior: 1917 c 156 § 130; RRS § 1500; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.100 Confirmation of sale—Approval—Resale. The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made. [2010 c 8 § 2047; 1965 c 145 § 11.56.100. Prior: 1917 c 156 § 131; RRS § 1501; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.110 Offer of increased bid—Duty of court. If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his or her bid in the form of cash, money order, cashier's check,

or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his or her bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him or her at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he or she deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: PROVIDED, HOWEVER, That the court shall consider the net realization to the estate in determining the best bid. [2010 c 8 § 2048; 1967 ex.s. c 106 § 2; 1967 c 168 § 18; 1965 c 145 § 11.56.110. Prior: 1955 c 154 § 1; 1917 c 156 § 132; RRS § 1502.]

Additional notes found at www.leg.wa.gov

11.56.115 Effect of confirmation. No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with. [1965 c 145 § 11.56.115. Prior: 1917 c 156 § 134; RCW 11.56.130; RRS § 1504; prior: Code 1881 § 1510; 1854 p 287 § 120.]

Real estate sold by executor, etc., limitation of action: RCW 4.16.070.

11.56.120 Conveyance after confirmation of sale. Upon the confirmation of any such sale the court shall direct the personal representative to make, execute and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased and any interest acquired by the estate. [1965 c 145 § 11.56.120. Prior: 1917 c 156 § 133; RRS § 1503; prior: Code 1881 § 1510; 1854 p 287 § 120.]

11.56.180 Sale of decedent's contract interest in land.

If the deceased person at the time of his or her death was possessed of a contract for the purchase of lands, his or her interest in such lands under such contract may be sold on the application of his or her personal representative in the same manner as if he or she died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this title in respect to lands of which he or she died seized, except as hereinafter provided. [2010 c 8 § 2049; 1965 c 145 § 11.56.180. Prior: 1917 c 156 § 139; RRS § 1509; prior: Code 1881 § 1519; 1854 p 289 § 129.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

11.56.210 Assignment of decedent's contract.

Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his or her heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [2010 c 8 § 2050; 1965 c 145 § 11.56.210. Prior: 1917 c 156 § 142; RRS § 1512; prior: Code 1881 § 1522; 1854 p 289 § 132.]

11.56.220 Redemption of decedent's mortgaged estate.

If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the personal representative to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors. [1965 c 145 § 11.56.220. Prior: 1917 c 156 § 143; RRS § 1513; prior: Code 1881 § 1523; 1854 p 289 § 133.]

11.56.230 Sale or mortgage to effect redemption.

If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him or her to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [2010 c 8 § 2051; 1965 c 145 § 11.56.230. Prior: 1917 c 156 § 144; RRS § 1514; prior: 1895 c 157 § 11; 1888 p 185 § 1.]

11.56.240 Sale of mortgaged property if redemption inexpedient.

If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this title, and shall be sold subject to such mortgage, and the personal representative shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the

deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration. [1965 c 145 § 11.56.240. Prior: 1917 c 156 § 145; RRS § 1515; prior: Code 1881 § 1524; 1873 p 296 § 211; 1854 p 290 § 134.]

11.56.250 Sales directed by will.

When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court. [1965 c 145 § 11.56.250. Prior: 1917 c 156 § 146; RRS § 1516; prior: Code 1881 § 1527.]

11.56.265 Broker's fee and closing expenses—Sale, mortgage or lease.

In connection with the sale, mortgage or lease of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 § 11.56.265.]

Allowance of necessary expenses to personal representative: RCW 11.48.050.

11.56.280 Borrowing on general credit of estate—Petition—Notice—Hearing.

Whenever it shall appear to the satisfaction of the court that money is needed to pay debts of the estate, expenses of administration, or estate taxes, the court may by order authorize the personal representative to borrow such money, on the general credit of the estate, as appears to the court necessary for the purposes aforesaid. The time for repayment, rate of interest and form of note authorized shall be as specified by the court in its order. The money borrowed pursuant thereto shall be an obligation of the estate repayable with the same priority as unsecured claims filed against the estate. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and tax obligations and such other things as will tend to assist the court in determining the necessity for the borrowing and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition need be given, except to persons who have requested notice under the provisions of RCW 11.28.240; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the foregoing purpose. The absence of any allegation in the petition shall not deprive the court of jurisdiction to authorize such borrowing. [1990 c 180 § 3; 1965 c 145 § 11.56.280.]

Order of payment of debts: RCW 11.76.110.

Chapter 11.60 RCW

PERFORMANCE OF DECEDENT'S CONTRACTS

Sections

- 11.60.010 Order for performance on application of personal representative.
- 11.60.020 Petition, notice, and hearing when personal representative fails to make application.
- 11.60.030 Hearing.
- 11.60.040 Conveyance of real property—Effect.
- 11.60.060 Procedure on death of person entitled to performance.

Evidence, transaction with person since deceased: RCW 5.60.030.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

Sale or assignment of decedent's contract interest in land: RCW 11.56.180, 11.56.210.

11.60.010 Order for performance on application of personal representative. If any person, who is bound by contract, in writing, shall die before performing said contract, the superior court of the county in which the estate is being administered, may upon application of the personal representative, without notice, make an order authorizing and directing the personal representative to perform such contract. [1965 c 145 § 11.60.010. Prior: 1917 c 156 § 188; RRS § 1558; prior: 1891 p 390 § 40; Code 1881 § 623; 1877 p 130 § 626; 1854 p 292 § 150.]

Guardianship, performance of contracts: RCW 11.92.130.

11.60.020 Petition, notice, and hearing when personal representative fails to make application. If the personal representative fails to make such application, then any person claiming to be entitled to such performance under such contract, may present a petition setting forth the facts upon which such claim is predicated. Notice of hearing shall be in accordance with the provisions of *RCW 11.16.081. [1965 c 145 § 11.60.020. Prior: 1917 c 156 § 189; RRS § 1559; prior: 1891 c 155 § 41; Code 1881 § 694; 1877 p 130 § 627; 1854 p 292 § 151.]

*Reviser's note: RCW 11.16.081 was repealed by 1969 c 70 § 5.

Actions for recovery of property and on contract: RCW 11.48.090.

11.60.030 Hearing. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as provided in *RCW 11.16.081, the court shall proceed to a hearing and determine the matter. [1965 c 145 § 11.60.030. Prior: 1917 c 156 § 190; RRS § 1560; prior: 1891 c 155 § 42; Code 1881 § 625; 1877 p 130 § 628; 1854 p 293 § 152.]

*Reviser's note: RCW 11.16.081 was repealed by 1969 c 70 § 5.

11.60.040 Conveyance of real property—Effect. In the case of real property, a conveyance executed under the provisions of this title shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title, and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself or herself were still living and executed the conveyance in pursuance of such contract. [2010 c 8 § 2052; 1965 c 145 § 11.60.040. Prior: 1917 c 156 § 191; RRS § 1561; prior: Code 1881 § 626; 1877 p 130 § 629; 1854 p 293 § 153.]

11.60.060 Procedure on death of person entitled to performance. If the person entitled to performance shall die before the commencement of the proceedings according to the provisions of this title or before the completion of performance, any person who would have been entitled to the performance under him or her, as heir, devisee, or otherwise, in case the performance had been made according to the terms of the contract, or the personal representative of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the performance shall inure to the persons who would have been entitled to it, or to the personal representative for their benefit. [2010 c 8 § 2053; 1965 c 145 § 11.60.060. Prior: 1917 c 156 § 193; RRS § 1563; prior: 1891 c 155 § 47; Code 1881 § 532; 1877 p 132 § 635; 1854 p 294 § 159.]

Chapter 11.62 RCW

SMALL ESTATES—DISPOSITION OF PROPERTY

Sections

- 11.62.005 Definitions.
- 11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities.
- 11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability.
- 11.62.030 Payment to surviving spouse or surviving domestic partner of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative.

Reviser's note: Inheritance and gift taxes were repealed by 1981 2nd ex.s. c 7 § 83.100.160. For provisions relating to estate and transfer taxes, see chapter 83.100 RCW.

11.62.005 Definitions. As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2)(a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse or surviving domestic partner of the decedent to the extent that the surviving spouse or surviving domestic partner is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse or said domestic partner and the decedent; and/or

(iii) The department of social and health services, to the extent of funds expended or paid, in the case of claims provided under RCW 43.20B.080; and/or

(iv) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, except for the state as set forth in (a)(iii) and (iv) of this subsection, shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization, specifically including but not limited to a bank, credit union,

brokerage firm or stock transfer agent, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. [2008 c 6 § 922; 2006 c 360 § 15; 1994 c 21 § 1; 1988 c 64 § 24; 1977 ex.s. c 234 § 29.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

Additional notes found at www.leg.wa.gov

11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities. (1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse or surviving domestic partner as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his or her death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's or surviving domestic partner's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent

to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

(5) A copy of the affidavit, including the decedent's social security number, shall be mailed to the state of Washington, department of social and health services, office of financial recovery. [2008 c 6 § 923; 2006 c 360 § 16; 1995 1st sp.s. c 18 § 60; 1993 c 291 § 1. Prior: 1988 c 64 § 25; 1988 c 29 § 2; 1987 c 157 § 1; 1977 ex.s. c 234 § 11; 1974 ex.s. c 117 § 4.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Additional notes found at www.leg.wa.gov

11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability. The person paying, delivering, transferring, or issuing personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010(2) as now or hereafter amended to be contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2), or into the payment of any estate tax liability.

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010(2) as now or hereafter amended until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed under RCW 11.62.010 as now or hereafter amended.

If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment

over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 as now or hereafter amended is answerable and accountable therefor to any personal representative of the estate of the decedent or to any other person having a superior right thereto. [1990 c 180 § 4; 1977 ex.s. c 234 § 12; 1974 ex.s. c 117 § 5.]

Additional notes found at www.leg.wa.gov

11.62.030 Payment to surviving spouse or surviving domestic partner of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative. On the death of any member of any credit union organized under chapter 31.12 RCW or federal law, such credit union may pay to the surviving spouse or surviving domestic partner the moneys of such member on deposit to the credit of said deceased member, including moneys deposited as shares in said credit union, in cases where the amount of deposit does not exceed the sum of one thousand dollars, upon receipt of an affidavit from the surviving spouse or surviving domestic partner to the effect that the member died and no executor or administrator has been appointed for the member's estate, and the member had on deposit in said credit union money not exceeding the sum of one thousand dollars. The payment of such deposit made in good faith to the spouse or the domestic partner making the affidavit shall be a full acquittance and release of the credit union for the amount of the deposit so paid.

No probate proceeding shall be necessary to establish the right of said surviving spouse to withdraw said deposits upon the filing of said affidavit: PROVIDED, That whenever a personal representative is appointed in an estate where a withdrawal of deposits has been had in compliance with this section, the spouse so withdrawing said deposits shall account for the same to the personal representative. The credit union may also pay out the moneys on deposit to the credit of the deceased upon presentation of an affidavit as provided in RCW 11.62.010, as now or hereafter amended. [2008 c 6 § 924; 1980 c 41 § 10.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

Chapter 11.64 RCW PARTNERSHIP PROPERTY

Sections

11.64.002	Inventory—Appraisalment.
11.64.008	Surviving partner may continue in possession.
11.64.016	Security may be required.
11.64.022	Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver.
11.64.030	Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities.
11.64.040	Surviving partner may operate under agreement with estate—Termination.

11.64.002 Inventory—Appraisalment. Within three months after receiving written request from the personal representative the surviving partner or partners of the partnership shall furnish the personal representative with a verified inventory of the assets of the partnership. The inventory shall

state the value of the assets as shown by the books of the partnership and list the liabilities of the partnership. At the request of the personal representative, the surviving partner or partners shall permit the assets of the partnership to be appraised, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. [1977 ex.s. c 234 § 13; 1965 c 145 § 11.64.002. Prior: 1951 c 197 § 1; prior: (i) 1917 c 156 § 88; RRS § 1458. (ii) 1917 c 156 § 91; RRS § 1461.]

Inventory of estate to identify decedent's share in partnership: RCW 11.44.015(1)(f).

Additional notes found at www.leg.wa.gov

11.64.008 Surviving partner may continue in possession. The surviving partner or partners may continue in possession of the partnership estate, pay its debts, and settle its business, and shall account to the personal representative of the decedent and shall pay over such balances as may, from time to time, be payable to him or her. [2010 c 8 § 2054; 1977 ex.s. c 234 § 14; 1965 c 145 § 11.64.008. Prior: 1951 c 197 § 2.]

Additional notes found at www.leg.wa.gov

11.64.016 Security may be required. If the surviving partner or partners commit waste, or if it appears to the court that it is for the best interest of the estate of the decedent, such court may, after a hearing, order the surviving partner or partners to give security for the faithful settlement of the partnership affairs and the payment to the personal representative of any amount due the estate. [1977 ex.s. c 234 § 15; 1965 c 145 § 11.64.016. Prior: 1951 c 197 § 3.]

Additional notes found at www.leg.wa.gov

11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver. If the surviving partner or partners fail or refuse to furnish an inventory or list of liabilities, to permit an appraisal, or to account to the personal representative, or to furnish a bond when required pursuant to RCW 11.64.016, the court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not furnished an inventory list of liabilities, or permitted an appraisal or why they should not account to the personal representative or file a bond. The citation shall be served not less than ten days before the return day designated therein, or such shorter period as the court upon a showing of good cause deems appropriate. If the surviving partner or partners neglect or refuse to file an inventory or list of liabilities, or to permit an appraisal, or fail to account to the court or to file a bond, after they have been directed to do so, they may be punished for a contempt of court as provided in chapter 7.21 RCW. Where the surviving partner or partners fail to file a bond after being ordered to do so by the court, the court may also appoint a receiver of the partnership estate under chapter 7.60 RCW, and may order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner or partners personally, or partly by each of the parties. [2004 c 165 § 39; 1989 c 373 § 15; 1977 ex.s. c 234 § 16; 1965 c 145 § 11.64.022. Prior: 1951 c 197 § 4.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Additional notes found at www.leg.wa.gov

11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities. The surviving partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon a hearing pursuant to such petition the court shall, in such manner as it sees fit, determine and by order fix the value of the interest of the deceased partner over and above all partnership debts and obligations, the price, terms, and conditions of such sale and the period of time during which the surviving partner or partners shall have the prior right to purchase the interest of the deceased partner. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his or her right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided.

The court shall make such orders in connection with such sale as it deems proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations. [2010 c 8 § 2055; 1977 ex.s. c 234 § 17; 1965 c 145 § 11.64.030. Prior: 1951 c 197 § 5; prior: 1917 c 156 § 89; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1459.]

Additional notes found at www.leg.wa.gov

11.64.040 Surviving partner may operate under agreement with estate—Termination. The court may, in instances where it is deemed advisable, authorize and direct the personal representative of the estate of a deceased partner to enter into an agreement with the surviving partner or partners under which the surviving partner or partners may continue to operate any going business of the former partnership until the further order of the court. The court may, in its discretion, revoke such authority and direction and thereby terminate such agreement at any time by further order, entered upon the application of the personal representative or the surviving partner or partners or any interested person or on its own motion. [1965 c 145 § 11.64.040. Prior: 1951 c 197 § 6; prior: 1917 c 156 § 90; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1460.]

Chapter 11.66 RCW SOCIAL SECURITY BENEFITS

Sections

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| 11.66.010 | Social security benefits—Payment to survivors or department of social and health services—Effect. |
| 11.66.900 | Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. |

11.66.010 Social security benefits—Payment to survivors or department of social and health services—Effect. (1) If not less than thirty days after the death of an individual entitled at the time of death to a monthly benefit or benefits under Title II of the social security act, all or part of the amount of such benefit or benefits, not in excess of one thousand dollars, is paid by the United States to (a) the sur-

living spouse, (b) one or more of the deceased's children, or descendants of his or her deceased children, (c) the secretary of social and health services if the decedent was a resident of a state institution at the date of death and liable for the cost of his or her care in an amount at least as large as the amount of such benefits, (d) the deceased's father or mother, or (e) the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, such payment shall be deemed to be a payment to the legal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(2) The provisions of subsection (1) of this section shall apply only if an affidavit has been made and filed with the United States department of health, education, and welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (a) the date of death of the deceased, (b) the relationship of the affiant to the deceased, (c) that no executor or administrator for the deceased has qualified or been appointed, nor to the affiant's knowledge is administration of the deceased's estate contemplated, and (d) that, to the affiant's knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant: PROVIDED, That the affidavit filed by the secretary of social and health services shall meet the requirements of (a) and (c) of this subsection and, in addition, show that the decedent left no known surviving spouse or children and died while a resident of a state institution at the date of death and liable for the cost of his or her care in an amount at least as large as the amount of such benefits. [2010 c 8 § 2056; 1979 c 141 § 12; 1967 c 175 § 2.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Additional notes found at www.leg.wa.gov

11.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 33.]

Chapter 11.68 RCW
SETTLEMENT OF ESTATES
WITHOUT ADMINISTRATION

Sections

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11.68.120	Nonintervention powers not deemed waived by obtaining order or decree.
11.68.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.68.011 Settlement without court intervention—Petition—Conditions—Exceptions. (1) A personal representative may petition the court for nonintervention powers, whether the decedent died testate or intestate.

(2) Unless the decedent has specified in the decedent's will, if any, that the court not grant nonintervention powers to the personal representative, the court shall grant nonintervention powers to a personal representative who petitions for the powers if the court determines that the decedent's estate is solvent, taking into account probate and nonprobate assets, and that:

(a) The petitioning personal representative was named in the decedent's probated will as the personal representative;

(b) The decedent died intestate, the petitioning personal representative is the decedent's surviving spouse or surviving domestic partner, the decedent's estate is composed of community property only, and the decedent had no issue: (i) Who is living or in gestation on the date of the petition; (ii) whose identity is reasonably ascertainable on the date of the petition; and (iii) who is not also the issue of the petitioning spouse or petitioning domestic partner; or

(c) The personal representative was not a creditor of the decedent at the time of the decedent's death and the administration and settlement of the decedent's will or estate with nonintervention powers would be in the best interests of the decedent's beneficiaries and creditors. However, the administration and settlement of the decedent's will or estate with nonintervention powers will be presumed to be in the benefi-

ciaries' and creditors' best interest until a person entitled to notice under RCW 11.68.041 rebuts that presumption by coming forward with evidence that the grant of nonintervention powers would not be in the beneficiaries' or creditors' best interests.

(3) The court may base its findings of facts necessary for the grant of nonintervention powers on: (a) Statements of witnesses appearing before the court; (b) representations contained in a verified petition for nonintervention powers, in an inventory made and returned upon oath into the court, or in an affidavit filed with the court; or (c) other proof submitted to the court. [2008 c 6 § 925; 1997 c 252 § 59.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.68.021 Hearing on petition for nonintervention powers. A hearing on a petition for nonintervention powers may be held at the time of the appointment of the personal representative or at any later time. [1997 c 252 § 60.]

Additional notes found at www.leg.wa.gov

11.68.041 Petition for nonintervention powers—Notice requirements—Exceptions. (1) Advance notice of the hearing on a petition for nonintervention powers referred to in RCW 11.68.011 is not required in those circumstances in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b).

(2) In all other cases, if the petitioner wishes to obtain nonintervention powers, the personal representative shall give notice of the petitioner's intention to apply to the court for nonintervention powers to all heirs, all beneficiaries of a gift under the decedent's will, and all persons who have requested, and who are entitled to, notice under RCW 11.28.240, except that:

(a) A person is not entitled to notice if the person has, in writing, either waived notice of the hearing or consented to the grant of nonintervention powers; and

(b) An heir who is not also a beneficiary of a gift under a will is not entitled to notice if the will has been probated and the time for contesting the validity of the will has expired.

(3) The notice required by this section must be either personally served or sent by regular mail at least ten days before the date of the hearing, and proof of mailing of the notice must be by affidavit filed in the cause. The notice must contain the decedent's name, the probate cause number, the name and address of the personal representative, and must state in substance as follows:

(a) The personal representative has petitioned the superior court of the state of Washington for county, for the entry of an order granting nonintervention powers and a hearing on that petition will be held on, the day of,, at o'clock, . . M.;

(b) The petition for an order granting nonintervention powers has been filed with the court;

(c) Following the entry by the court of an order granting nonintervention powers, the personal representative is entitled to administer and close the decedent's estate without further court intervention or supervision; and

(d) A person entitled to notice has the right to appear at the time of the hearing on the petition for an order granting

nonintervention powers and to object to the granting of nonintervention powers to the personal representative.

(4) If notice is not required, or all persons entitled to notice have either waived notice of the hearing or consented to the entry of an order granting nonintervention powers as provided in this section, the court may hear the petition for an order granting nonintervention powers at any time. [1997 c 252 § 61.]

Additional notes found at www.leg.wa.gov

11.68.050 Objections to granting of nonintervention powers—Restrictions. (1) If at the time set for the hearing upon a petition for nonintervention powers, any person entitled to notice of the hearing on the petition under RCW 11.68.041 shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider the objections, if any, in connection with its determination under RCW 11.68.011(2)(c) of whether a grant of nonintervention powers would be in the best interests of the decedent's beneficiaries.

(2) The nonintervention powers of a personal representative may not be restricted at a hearing on a petition for nonintervention powers in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b), unless a will specifies that the nonintervention powers of a personal representative may be restricted when the powers are initially granted. In all other cases, including without limitation any hearing on a petition that alleges that the personal representative has breached its duties to the beneficiaries of the estate, the court may restrict the powers of the personal representative in such manner as the court determines to be in the best interests of the decedent's beneficiaries. [1997 c 252 § 62; 1977 ex.s. c 234 § 21; 1974 ex.s. c 117 § 17.]

Additional notes found at www.leg.wa.gov

11.68.060 Death, resignation, or disablement of personal representative—Successor to administer nonintervention powers—Petition. If any personal representative of the estate of the decedent dies, resigns, or otherwise becomes disabled from any cause from acting as the nonintervention personal representative, the successor personal representative, or a person who has petitioned to be appointed as a successor personal representative, may petition the court for nonintervention powers, and the court shall act, in accordance with RCW 11.68.011 through 11.68.041 and 11.68.050. [1997 c 252 § 63; 1977 ex.s. c 234 § 22; 1974 ex.s. c 117 § 18.]

Additional notes found at www.leg.wa.gov

11.68.065 Report of affairs of estate—Petition by beneficiary—Filing—Notice—Hearing—Other accounting and information. A beneficiary whose interest in an estate has not been fully paid or distributed may petition the court for an order directing the personal representative to deliver a report of the affairs of the estate signed and verified by the personal representative. The petition may be filed at any time after one year from the day on which the report was last delivered, or, if none, then one year after the order appointing the personal representative. Upon hearing of the petition after due notice as required in RCW 11.96A.110, the court may, for good cause shown, order the personal repre-

sentative to deliver to the petitioner the report for any period not covered by a previous report. The report for the period shall include such of the following as the court may order: A description of the amount and nature of all property, real and personal, that has come into the hands of the personal representative; a statement of all property collected and paid out or distributed by the personal representative; a statement of claims filed and allowed against the estate and those rejected; any estate, inheritance, or fiduciary income tax returns filed by the personal representative; and such other information as the order may require. This subsection does not limit any power the court might otherwise have at any time during the administration of the estate to require the personal representative to account or furnish other information to any person interested in the estate. [1999 c 42 § 614; 1997 c 252 § 64.]

Additional notes found at www.leg.wa.gov

11.68.070 Procedure when personal representative recreant to trust or subject to removal. If any personal representative who has been granted nonintervention powers fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed. In the event the court shall restrict the powers of the personal representative in any manner, it shall endorse the words "Powers restricted" upon the original order of solvency together with the date of said endorsement, and in all such cases the cost of the citation, hearing, and reasonable attorney's fees may be awarded as the court determines. [2010 c 8 § 2057; 1977 ex.s. c 234 § 23; 1974 ex.s. c 117 § 19.]

Additional notes found at www.leg.wa.gov

11.68.080 Vacation or restriction of nonintervention powers following insolvency—Notice—Determinations affecting prior grants of nonintervention powers upon petition—Endorsement on prior orders. (1) Within ten days after the personal representative has received from alleged creditors under chapter 11.40 RCW claims that have an aggregate face value that, when added to the other debts and to the taxes and expenses of greater priority under applicable law, would appear to cause the estate to be insolvent, the personal representative shall notify in writing all beneficiaries under the decedent's will and, if any of the decedent's property will pass according to the laws of intestate succession, all heirs, together with any unpaid creditors, other than a creditor whose claim is then barred under chapter 11.40 RCW or the otherwise applicable statute of limitations, that the estate might be insolvent. The personal representative shall file a copy of the written notice with the court.

(2) Within ten days after an estate becomes insolvent, the personal representative shall petition under RCW 11.96A.080 for a determination of whether the court should reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers. Notice of the hearing must be given in accordance with RCW 11.96A.110.

(3) If, upon a petition under RCW 11.96A.080 of any personal representative, beneficiary under the decedent's will, heir if any of the decedent's property passes according to the laws of intestate succession, or any unpaid creditor with a claim that has been accepted or judicially determined to be enforceable, the court determines that the decedent's estate is insolvent, the court shall reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers to the extent necessary to protect the best interests of the beneficiaries and creditors of the estate.

(4) If the court rescinds or restricts a prior grant of nonintervention powers, the court shall endorse the term "powers rescinded" or "powers restricted" upon the prior order together with the date of the endorsement. [1999 c 42 § 615; 1997 c 252 § 65; 1977 ex.s. c 234 § 24; 1974 ex.s. c 117 § 20.]

Additional notes found at www.leg.wa.gov

11.68.090 Powers of personal representative under nonintervention will—Scope—Relief from duties, restrictions, liabilities by will. (1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment. [2011 c 327 § 3; 2003 c 254 § 3; 1997 c 252 § 66;

1988 c 29 § 3; 1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.68.095 Co-personal representatives—Powers. All of the provisions of RCW 11.98.016 regarding the exercise of powers by co-trustees of a trust shall apply to the co-personal representatives of an estate in which the co-personal representatives have been granted nonintervention powers, as if, for purposes of the interpretation of that law, co-personal representatives were co-trustees and an estate were a trust. [1997 c 252 § 67.]

Additional notes found at www.leg.wa.gov

11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees. (1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall have the authority and it shall be its duty, to make and cause to be entered a decree which either:

(a) Finds and adjudges that all approved claims of the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under his or her will, and distributes the property of the decedent to the persons entitled thereto; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, his or her attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the payment of said fees shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative. [2010 c 8 § 2058; 1977 ex.s. c 234 § 25; 1974 ex.s. c 117 § 22.]

Additional notes found at www.leg.wa.gov

11.68.110 Declaration of completion of probate—Contents—Notice—Discharge of personal representative—Waiver of notice. (1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

- (a) The date of the decedent’s death and the decedent’s residence at the time of death;
- (b) Whether or not the decedent died testate or intestate;
- (c) If the decedent died testate, the date of the decedent’s last will and testament and the date of the order probating the will;
- (d) That each creditor’s claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of estate taxes due as the result of the decedent’s death has been determined, settled, and paid;
- (e) That the personal representative has completed the administration of the decedent’s estate without court intervention, and the estate is ready to be closed;
- (f) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each heir; and
- (g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

(2) Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative’s powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

(3) Within five days of the date of the filing of the declaration of completion, the personal representative or the personal representative’s lawyer shall mail a copy of the declaration of completion to each heir, legatee, or devisee of the decedent, who: (a) Has not waived notice of the filing, in writing, filed in the cause; and (b) either has not received the full amount of the distribution to which the heir, legatee, or devisee is entitled or has a property right that might be affected adversely by the discharge of the personal representative under this section, together with a notice which shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING OF DECLARATION OF COMPLETION OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the day of , 19 . . . ; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative’s lawyer, within thirty days after the date of the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

Dated this day of , 19 . . .

Personal Representative

(4) If all heirs, devisees, and legatees of the decedent entitled to notice under this section waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative. [1998 c 292 § 202; 1997 c 252 § 68; 1990 c 180 § 5; 1985 c 30 § 8. Prior: 1984 c 149 § 11; 1977 ex.s. c 234 § 26; 1974 ex.s. c 117 § 23.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.68.112 Final distribution upon declaration and notice of filing of declaration of completion of probate—Special powers of personal representative—Discharge from liability. If the declaration of completion of probate and the notice of filing of declaration of completion of probate state that the personal representative intends to make final distribution within five business days after the final date on which a beneficiary could petition for an order to approve fees or to require an accounting, which date is referred to in this section as the "effective date of the declaration of completion," and if the notice of filing of declaration of completion of probate sent to each beneficiary who has not received everything to which that beneficiary is entitled from the decedent’s estate specifies the amount of the minimum distribu-

tion to be made to that beneficiary, the personal representative retains, for five business days following the effective date of the declaration of completion, the power to make the stated minimum distributions. In this case, the personal representative is discharged from all claims other than those relating to the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is only discharged from liability for the distribution of the reserve when the whole reserve has been distributed and each beneficiary has received at least the distribution which that beneficiary's notice stated that the beneficiary would receive. [1997 c 252 § 69.]

Additional notes found at www.leg.wa.gov

11.68.114 Declaration of completion of probate—Special powers of personal representative to hold reserve and deal with taxing authorities—Notice of filing of declaration—Discharge from liability.

(1) The personal representative retains the powers to: Deal with the taxing authority of any federal, state, or local government; hold a reserve in an amount not to exceed three thousand dollars, for the determination and payment of any additional taxes, interest, and penalties, and of all reasonable expenses related directly or indirectly to such determination or payment; pay from the reserve the reasonable expenses, including compensation for services rendered or goods provided by the personal representative or by the personal representative's employees, independent contractors, and other agents, in addition to any taxes, interest, or penalties assessed by a taxing authority; receive and hold any credit, including interest, from any taxing authority; and distribute the residue of the reserve to the intended beneficiaries of the reserve; if:

(a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the declaration of completion of probate states that:

The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed, except for the determination of taxes and of interest and penalties thereon as permitted under this section;

and

(b) The notice of the filing of declaration of completion of probate must be in substantially the following form:

CAPTION NOTICE OF FILING OF
OF DECLARATION OF COMPLETION
CASE OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . , . . . ; unless you file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing:

(i) The schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable;

(ii) The Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW;

(iii) The acts that the personal representative performed before the Declaration of Completion of Probate was filed will be deemed approved, and the personal representative will be automatically discharged without further order of the court with respect to all such acts; and

(iv) The personal representative will retain the power to deal with the taxing authorities, together with \$. . . for the determination and payment of all remaining tax obligations. Only that portion of the reserve that remains after the settlement of any tax liability, and the payment of any expenses associated with such settlement, will be distributed to the persons legally entitled to the reserve.

(2) If the requirements in subsection (1) of this section are met, the personal representative is discharged from all claims other than those relating to the settlement of any tax obligations and the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is discharged from liability from the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers cease, thirty days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative. [1998 c 292 § 203; 1997 c 252 § 70.]

Additional notes found at www.leg.wa.gov

11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.

A personal representative who has acquired nonintervention powers in accordance with this chapter shall not be deemed to have waived his or her nonintervention powers by obtaining any order or decree during the course of his or her administration of the estate. [2010 c 8 § 2059; 1974 ex.s. c 117 § 24.]

Additional notes found at www.leg.wa.gov

11.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where

necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 34.]

Chapter 11.72 RCW DISTRIBUTION BEFORE SETTLEMENT

Sections

- 11.72.002 Delivery of specific property to distributee before final decree.
11.72.006 Decree of partial distribution—Distribution of part of estate.

11.72.002 Delivery of specific property to distributee before final decree. Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he or she is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him or her to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return. [2010 c 8 § 2060; 1965 c 145 § 11.72.002.]

11.72.006 Decree of partial distribution—Distribution of part of estate. After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the distribution. In the event of a request for a partial distribution asked by a person other than the personal representative of the estate, the costs of such proceedings and a reasonable allowance for attorneys fees shall be assessed against the applicant or applicants for the benefit of the estate. [1965 c 145 § 11.72.006. Formerly RCW 11.72.010 through 11.72.070.]

Chapter 11.76 RCW SETTLEMENT OF ESTATES

Sections

- 11.76.010 Report of personal representative—Contents—Interim reports.
11.76.020 Notice of hearing—Settlement of report.
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11.76.245 Procedure when claim made after time limitation.
11.76.247 When court retains jurisdiction after entry of decree of distribution.
11.76.250 Letters after final settlement.

Destruction of receipts for expenses under probate proceedings: RCW 36.23.065.

Estate and transfer taxes: Chapter 83.100 RCW.

11.76.010 Report of personal representative—Contents—Interim reports. Not less frequently than annually from the date of qualification, unless a final report has theretofore been rendered, the personal representative shall make, verify by his or her oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell, mortgage, lease, or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he or she may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease, or exchange; such report shall likewise state the amount of property, real and personal, which has come into his or her hands, and give a detailed statement of all sums collected by him or her, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him or her done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his or her judgment would be proper or which the court may order to be made. [2010 c 8 § 2061; 1965 c 145 § 11.76.010. Prior: 1917 c 156 § 159; RRS § 1529; prior: Code 1881 § 1544; 1854 p 296 § 167.]

11.76.020 Notice of hearing—Settlement of report. It shall not be necessary for the personal representative to give any notice of the hearing of any report prior to the final report, except as in RCW 11.28.240 provided, but the court may require notice of the hearing of any such report. [1965 c 145 § 11.76.020. Prior: 1917 c 156 § 160; RRS § 1530.]

11.76.030 Final report and petition for distribution—Contents. When the estate shall be ready to be closed, such personal representative shall make, verify, and file with the court his or her final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his or her previous report, and debts paid, and

generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative. If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective. [2010 c 8 § 2062; 1965 c 145 § 11.76.030. Prior: 1917 c 156 § 161; RRS § 1531; prior: 1891 c 155 § 34; Code 1881 § 1556; 1873 p 305 § 251; 1854 p 297 § 178.]

Discharge of personal representative for cause: RCW 11.28.160, 11.28.250.

11.76.040 Time and place of hearing—Notice. When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty days subsequent to the day of the publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the personal representative by publishing a notice thereof in a legal newspaper published in the county for one publication at least twenty days preceding the time fixed for the hearing. It shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court and that the court is asked to settle such report, distribute the property to the heirs or persons entitled thereto, and discharge the personal representative, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the personal representative or the clerk of the court.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the personal representative of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to him or her, and proof of such mailing shall be made by affidavit and filed at or before the hearing. [2010 c 8 § 2063; 1969 c 70 § 3; 1965 c 145 § 11.76.040. Prior: 1955 c 205 § 13; 1919 c 31 § 1; 1917 c 156 § 162; RRS § 1532. FORMER PART OF SECTION: re Notice of appointment as personal representative, now codified as RCW 11.28.237.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.76.050 Hearing on final report—Decree of distribution. Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may

proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisal, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by personal representatives and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable except upon a hearing before the court and the court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

The provisions of this section shall be concurrent with and not in derogation of other statutes as to partition of property or sale. [2010 c 8 § 2064; 1965 c 145 § 11.76.050. Prior: 1921 c 93 § 1; 1917 c 156 § 163; RRS § 1533; prior: Code 1881 § 1557; 1854 p 297 § 179.]

Partition: Chapter 7.52 RCW.

11.76.060 Continuance to cite in sureties on bond when account incorrect. If, at any hearing upon any report of any personal representative, it shall appear to the court before which said proceeding is pending that said personal representative has not fully accounted to the beneficiaries of his or her trust and that said report should not be approved as rendered, the court may continue said hearing to a day certain

and may cite the surety upon the bond of said personal representative to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said personal representative and the surety upon his or her bond. Said citation shall be personally served upon said surety in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the report of said personal representative shall not be approved and the court shall find that said personal representative is indebted to the beneficiary of his or her trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [2010 c 8 § 2065; 1965 c 145 § 11.76.060. Prior: 1937 c 28 § 1; RRS § 1590-1.]

11.76.070 Attorney's fees to contestant of erroneous account or report. If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his or her trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions. [2010 c 8 § 2066; 1965 c 145 § 11.76.070. Prior: 1937 c 28 § 2; RRS § 1590-2.]

Rules of court: *SPR 98.12W.*

11.76.080 Representation of incapacitated person by guardian ad litem or limited guardian—Exception. If there be any alleged incapacitated person as defined in RCW 11.88.010 interested in the estate who has no legally appointed guardian or limited guardian, the court:

(1) At any stage of the proceeding in its discretion and for such purpose or purposes as it shall indicate, may appoint; and

(2) For hearings held under RCW 11.54.010, 11.68.041, 11.68.100, and 11.76.050 or for entry of an order adjudicating testacy or intestacy and heirship when no personal representative is appointed to administer the estate of the decedent, shall appoint some disinterested person as guardian ad litem to represent the allegedly incapacitated person with reference

to any petition, proceeding report, or adjudication of testacy or intestacy without the appointment of a personal representative to administer the estate of decedent in which the alleged incapacitated person may have an interest, who, on behalf of the alleged incapacitated person, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his or her services: PROVIDED, HOWEVER, That where a surviving spouse or surviving domestic partner is the sole beneficiary under the terms of a will, the court may grant a motion by the personal representative to waive the appointment of a guardian ad litem for a person who is the minor child of the surviving spouse or surviving domestic partner and the decedent and who is incapacitated solely for the reason of his or her being under eighteen years of age. [2008 c 6 § 806; 1997 c 252 § 71; 1977 ex.s. c 80 § 15; 1974 ex.s. c 117 § 45; 1971 c 28 § 1; 1969 c 70 § 4; 1965 c 145 § 11.76.080. Prior: 1917 c 156 § 164; RRS § 1534; prior: Code 1881 § 1558; 1854 p 297 § 180.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

11.76.095 Distribution of estates to minors. When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, it shall be required that:

(1) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository;

(2) A general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding; or

(3) A custodian be selected and the money or property be transferred to the custodian subject to chapter 11.114 RCW. [1997 c 252 § 72; 1991 c 193 § 28; 1988 c 29 § 5; 1974 ex.s. c 117 § 12; 1971 c 28 § 3; 1965 c 145 § 11.76.095.]

Additional notes found at www.leg.wa.gov

11.76.100 Receipts for expenses from personal representative. In rendering his or her accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he or she shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he or she may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his or her own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate. [2010 c 8 § 2067; 1987 c 363 § 2; 1965 c 145

§ 11.76.100. Prior: 1917 c 156 § 170; RRS § 1540; prior: Code 1881 § 1553; 1854 p 297 § 176.]

11.76.110 Order of payment of debts. After payment of costs of administration the debts of the estate shall be paid in the following order:

(1) Funeral expenses in such amount as the court shall order.

(2) Expenses of the last sickness, in such amount as the court shall order.

(3) Wages due for labor performed within sixty days immediately preceding the death of decedent.

(4) Debts having preference by the laws of the United States.

(5) Taxes, or any debts or dues owing to the state.

(6) Judgments rendered against the deceased in his or her lifetime which are liens upon real estate on which executions might have been issued at the time of his or her death, and debts secured by mortgages in the order of their priority.

(7) All other demands against the estate. [2010 c 8 § 2068; 1965 c 145 § 11.76.110. Prior: 1917 c 156 § 171; RRS § 1541; prior: Code 1881 § 1562; 1860 p 213 § 264; 1854 p 298 § 184.]

Borrowing on general credit of estate: RCW 11.56.280.

Claims against estate: Chapter 11.40 RCW.

Sale, etc., of property—Priority as to realty or personalty: Chapter 11.10 RCW.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

Wages, preference on death of employer: RCW 49.56.020.

11.76.120 Limitation on preference to mortgage or judgment. The preference given in RCW 11.76.110 to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment. [1965 c 145 § 11.76.120. Prior: 1917 c 156 § 172; RRS § 1542; prior: 1897 c 22 § 1; Code 1881 § 1653; 1854 p 298 § 185.]

11.76.130 Expense of monument. Personal representatives of the estate of any deceased person are hereby authorized to expend a reasonable amount out of the estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt of the said decedent, and the expense thereof shall be paid as the funeral expenses are paid. [1965 c 145 § 11.76.130. Prior: 1917 c 156 § 175; RRS § 1545; prior: Code 1881 § 1555; 1875 p 127 § 1.]

11.76.150 Payment of claims where estate insufficient. If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his or her claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid. [2010 c 8 § 2069; 1965 c 145 § 11.76.150. Prior: 1917 c 156 § 174; RRS § 1544; prior: Code 1881 § 1564; 1854 p 298 § 186.]

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Priority of sale, etc. as between realty and personalty: Chapter 11.10 RCW.

11.76.160 Liability of personal representative.

Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his or her claim or the dividend thereon, except when his or her inability to make the payment thereof from the property of the estate shall result without fault upon his or her part. The personal representative shall likewise be liable on his or her bond to each creditor. [2010 c 8 § 2070; 1965 c 145 § 11.76.160. Prior: 1917 c 156 § 176; RRS § 1546; prior: 1891 c 155 § 35; Code 1881 § 1568; 1854 p 299 § 190.]

11.76.170 Action on claim not acted on—Contribution. If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his or her bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his or her sureties be required to make any payment in this section provided for, he or she or they shall have a right of action against said distributees and creditors to compel them to contribute their just share. [2010 c 8 § 2071; 1965 c 145 § 11.76.170. Prior: 1917 c 156 § 177; RRS § 1547; prior: Code 1881 § 1569; 1860 p 214 § 271; 1854 p 299 § 191.]

11.76.180 Order maturing claim not due. If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.190 Procedure on contingent and disputed claim. If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he or she shall become entitled thereto; or if he or she fails to establish his or her claim, to be paid over or distributed as the circumstances of the case may require. [2010 c 8 § 2072; 1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.200 Agent for absentee distributee. When any estate has been or is about to be distributed by decree of the court as provided in this chapter, to any person who has not been located, the court shall appoint an agent for the purpose of representing the interests of such person and of taking possession and charge of said estate for the benefit of such absentee person: PROVIDED, That no public official may be appointed as agent under this section. [1965 c 145 §

11.76.200. Prior: 1955 ex.s. c 7 § 1; 1917 c 156 § 165; RRS § 1535.]

11.76.210 Agent's bond. Such agent shall make, subscribe and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he or she shall be authorized to receive any property of said estate. [2010 c 8 § 2073; 1965 c 145 § 11.76.210. Prior: 1955 ex.s. c 7 § 2; 1917 c 156 § 166; RRS § 1536.]

11.76.220 Sale of unclaimed estate—Remittance of proceeds to department of revenue. If the estate remains in the hands of the agent unclaimed for three years, any property not in the form of cash shall be sold under order of the court, and all funds, after deducting a reasonable sum for expenses and services of the agent, to be fixed by the court, shall be paid into the county treasury. The county treasurer shall issue triplicate receipts therefor, one of which shall be filed with the county auditor, one with the court, and one with the department of revenue. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the county treasurer shall forthwith remit them to the department of revenue for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1975 1st ex.s. c 278 § 10; 1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

Escheats: Chapter 11.08 RCW.

Additional notes found at www.leg.wa.gov

11.76.230 Liability of agent. The agent shall be liable on his or her bond for the care and preservation of the estate while in his or her hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state. [2010 c 8 § 2074; 1965 c 145 § 11.76.230. Prior: 1955 ex.s. c 7 § 5; 1917 c 156 § 168; RRS § 1538.]

11.76.240 Claimant to proceeds of sale. During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his or her legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him or her, but leaving lineal descendants surviving, such lineal descendants may claim. If any claim to the estate is made during the period specified above, the claimant shall forthwith notify the department of revenue in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the department of revenue, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person. [2010 c 8 § 2075; 1975 1st ex.s. c 278 § 11; 1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

Additional notes found at www.leg.wa.gov

11.76.243 Heirs may institute probate proceedings if no claimant appears. If no person appears to claim the

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estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his or her estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him or her to the administrator upon being furnished a certified copy of the letters of administration. [2010 c 8 § 2076; 1965 c 145 § 11.76.243. Prior: 1955 ex.s. c 7 § 7.]

11.76.245 Procedure when claim made after time limitation. After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243, the absentee claimant may, at any time, if the assets of the estate have not been claimed under the provisions of RCW 11.76.240 and 11.76.243, notify the department of revenue of his or her claim to the estate, and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. The department of revenue may appear in answer to such petition. Upon proof being made to the probate court that the claimant is entitled to the estate assets, the court shall render its judgment to that effect and the assets shall be paid to the claimant without interest, upon appropriation made by the legislature. [2010 c 8 § 2077; 1975 1st ex.s. c 278 § 12; 1965 c 145 § 11.76.245. Prior: 1955 ex.s. c 7 § 8.]

Additional notes found at www.leg.wa.gov

11.76.247 When court retains jurisdiction after entry of decree of distribution. After the entry of the decree of distribution in the probate proceedings the court shall retain jurisdiction for the purpose of carrying out the provisions of RCW 11.76.200, 11.76.210, 11.76.220, 11.76.230, 11.76.240, 11.76.243 and 11.76.245. [1965 c 145 § 11.76.247. Prior: 1955 ex.s. c 7 § 3.]

11.76.250 Letters after final settlement. A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued. [1965 c 145 § 11.76.250. Prior: 1917 c 156 § 180; RRS § 1550; prior: Code 1881 § 1603; 1854 p 304 § 224.]

Chapter 11.80 RCW ESTATES OF ABSENTEES

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11.80.010	Petition—Notice—Hearing—Appointment of trustee.
11.80.020	Inventory and appraisal—Bond of trustee.
11.80.030	Reports of trustee.
11.80.040	Sale of property—Application of proceeds and income.
11.80.050	Allowance for support of dependents—Sale of property.
11.80.055	Continuation of absentee's business—Performance of absentee's contracts.
11.80.060	Removal or resignation of trustee—Final account.
11.80.070	Period of trusteeship.
11.80.080	Provisional distribution—Notice of hearing—Will.
11.80.090	Hearing—Distribution—Bond of distributees.
11.80.100	Final distribution—Notice of hearing—Decree.
11.80.110	Escheat for want of presumptive heirs.

- 11.80.120 Personnel missing in action, interned, or captured construed as "absentee."
 11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form.

Unknown heirs, etc.—Pleading, etc.: RCW 4.28.140 through 4.28.160;
Rules of court: CR 10.

Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.

11.80.010 Petition—Notice—Hearing—Appointment of trustee. Whenever it shall be made to appear by petition to any judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the care and custody thereof, and that the owner of such property has absented himself or herself from the county and that his or her whereabouts is unknown and cannot with reasonable diligence be ascertained, or that the absentee owner is a person defined in RCW 11.80.120, which petition shall state the name of the absent owner, his or her approximate age, his or her last known place of residence, the circumstances under which he or she left and the place to which he or she was going, if known, his or her business or occupation and his or her physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a legal newspaper published in the county where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his or her whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts: PROVIDED, HOWEVER, That the court may, upon the filing of said petition, appoint a temporary trustee, who shall have the powers, duties and qualifications of a special administrator.

If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he or she may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his or her discretion be liable to disclose the whereabouts of the absentee, but when it shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he or she shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the spouse or the domestic partner of the absentee to his or her presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as hereinafter provided. [2008 c

6 § 932; 1972 ex.s. c 83 § 1; 1965 c 145 § 11.80.010. Prior: 1915 c 39 § 1; RRS § 1715-1.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Special administrators: Chapter 11.32 RCW.

11.80.020 Inventory and appraisal—Bond of trustee. The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his or her duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint a disinterested and qualified person to appraise such property, and report his or her appraisal to the court within such time as the court may fix. Upon the coming in of the inventory and appraisal, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his or her duties as trustee, and for accounting for such property, its rents, issues, profits, and increase. [2010 c 8 § 2078; 1967 c 168 § 15; 1965 c 145 § 11.80.020. Prior: 1915 c 39 § 2; RRS § 1715-2.]

11.80.030 Reports of trustee. The trustee shall, at the expiration of one year from the date of his or her appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his or her trusteeship, setting forth specifically the amounts received and expended and the conditions of the property. [2010 c 8 § 2079; 1965 c 145 § 11.80.030. Prior: 1915 c 39 § 3; RRS § 1715-3.]

11.80.040 Sale of property—Application of proceeds and income. If necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person or for such other purpose as the court may deem proper for the preservation of the estate, the trustee may sell, lease, or mortgage real or personal property of the estate under order of the court so to do, which order shall specify the particular property affected and the method, whether by public sale, private sale, or by negotiation, and the terms thereof, and the trustee shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues, and profits accruing therefrom in the care, maintenance, and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his or her services and those of his or her attorney as may be fixed by the court. The notices and procedures in conducting sales, leases, and mortgages hereunder shall be as provided in chapter 11.56 RCW. [2010 c 8 § 2080; 1965 c 145 § 11.80.040. Prior: 1915 c 39 § 4; RRS § 1715-4.]

Rules of court: SPR 98.12W.

11.80.050 Allowance for support of dependents—Sale of property. Whenever a petition is filed in said estate from which it appears to the satisfaction of the court that the owner of such property left a spouse or domestic partner, child or children, dependent upon such absentee for support or upon the property in the estate of such absentee, either in whole or in part, the court shall hold a hearing on said petition, after such notice as the court may direct, and upon such hearing shall enter such order as it deems advisable and may order an allowance to be paid out of any of the property of such estate, either community or separate, as the court shall deem reasonable and necessary for the support and maintenance of such dependent or dependents, pending the return of the absentee, or until such time as the property of said estate may be provisionally distributed to the presumptive heirs or to the devisees and legatees. Such allowance shall be paid by the trustee to such persons and in such manner and at such periods of time as the court may direct. For the purpose of carrying out the provisions of this section the court may direct the sale of any of the property of the estate, either real or personal, in accordance with the provisions of RCW 11.80.040. [2008 c 6 § 933; 1965 c 145 § 11.80.050. Prior: 1925 ex.s. c 80 § 1; RRS § 1715-4a.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.80.055 Continuation of absentee's business—Performance of absentee's contracts. Upon a showing of advantage to the estate of the absentee, the court may authorize the trustee to continue any business of the absentee in accordance with the provisions of RCW 11.48.025. The trustee may also obtain an order allowing the performance of the absentee's contracts in accordance with the provisions of chapter 11.60 RCW. [1965 c 145 § 11.80.055.]

11.80.060 Removal or resignation of trustee—Final account. The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his or her stead. At the termination of his or her trust, as hereinafter provided or in case of his or her resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of personal representatives. [2010 c 8 § 2081; 1965 c 145 § 11.80.060. Prior: 1915 c 39 § 5; RRS § 1715-5.]

11.80.070 Period of trusteeship. Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or attorney-in-fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the property shall escheat to the state as hereinafter provided. [1965 c 145 § 11.80.070. Prior: 1915 c 39 § 6; RRS § 1715-6.]

11.80.080 Provisional distribution—Notice of hearing—Will. Whenever the owner of such property shall have been absent from the county for the space of five years and his or her whereabouts are unknown and cannot with reasonable diligence be ascertained, his or her presumptive heirs at

law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: PROVIDED, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of.

Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published.

If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him or her so to do, and such will shall be opened, read, proven, filed, and recorded in the case, as are the wills of decedents. [2010 c 8 § 2082; 1965 c 145 § 11.80.080. Prior: 1915 c 39 § 7; RRS § 1715-7.]

Notice for appointment of trustees: RCW 11.80.010.

11.80.090 Hearing—Distribution—Bond of distributees. If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his or her whereabouts unknown for the space of five years, or there are strong presumptions that he or she is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees, and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues, and profits of any real property so provisionally distributed. [2010 c 8 § 2083; 1965 c 145 § 11.80.090. Prior: 1915 c 39 § 8; RRS § 1715-8.]

11.80.100 Final distribution—Notice of hearing—Decree. Whenever the owner of such property shall have been absent from the county for a space of seven years and his or her whereabouts are unknown and cannot with reasonable diligence be ascertained, his or her presumptive heirs at law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the

space of seven years and his or her whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his or her devisees and legatees, as the case may be. [2010 c 8 § 2084; 1965 c 145 § 11.80.100. Prior: 1915 c 39 § 9; RRS § 1715-9.]

11.80.110 Escheat for want of presumptive heirs.

Whenever the owner of such property for which a trustee has been appointed under the provisions of this chapter shall have been absent and unheard of for a period of seven years and no presumptive heirs at law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of the chapter shall apply to the court for a final settlement of his or her account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs. [2010 c 8 § 2085; 1965 c 145 § 11.80.110. Prior: 1915 c 39 § 10; RRS § 1715-10.]

Escheats: Chapter 11.08 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.80.120 Personnel missing in action, interned, or captured construed as "absentee." Any person serving in or with the armed forces of the United States, in or with the Red Cross, or in or with the merchant marine or otherwise, during any period of time when a state of hostilities exists between the United States and any other power and for one year thereafter, who has been reported or listed as missing in action, or interned in a neutral country, or captured by the enemy, shall be an "absentee" within the meaning of this chapter. [1972 ex.s. c 83 § 2.]

11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form. (1) If the spouse or domestic partner of any absentee owner, or his or her next of kin, if said absentee has no spouse or domestic partner, shall wish to sell or transfer any property of the absentee which has a gross value of less than five thousand dollars, or shall require the consent of the absentee in any matter regarding the absentee's children, or any other matter in which the gross value of the subject matter is less than five thousand dollars, such spouse or such domestic partner or next of kin may apply to the superior court for an order authorizing said sale, transfer, or consent without opening a full trustee proceeding as provided in this chapter. The applicant may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the superior court.

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF

.....,
Plaintiff,
vs.
.....,
Defendant.
.....

No.
PETITION FOR
SUMMARY
RELIEF

Petitioner,, whose residence is, and, Washington, and who is the of the absentee,, states that the absentee has been since, when Petitioner desires to sell/transfer of the value of, because The terms of the sale/transfer are Petitioner requires the consent of the absentee for the purpose of

.....
Petitioner

(Affidavit of Acknowledgment)

(2) The court may, without notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his or her dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any manner described by subsection (1) of this section. [2008 c 6 § 926; 1972 ex.s. c 83 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Chapter 11.84 RCW

INHERITANCE RIGHTS OF SLAYERS OR ABUSERS

Sections

- 11.84.010 Definitions.
- 11.84.020 Slayer or abuser not to benefit from death.
- 11.84.025 Disposition of retirement system proceeds payable to slayer or abuser.
- 11.84.030 Slayer or abuser deemed to predecease decedent.
- 11.84.040 Distribution of decedent's property.
- 11.84.050 Distribution of property held jointly with slayer or abuser.
- 11.84.060 Reversion and vested remainder.
- 11.84.070 Property subject to divestment, etc.
- 11.84.080 Contingent remainders and future interests.
- 11.84.090 Property appointed—Powers of revocation or appointment.
- 11.84.100 Insurance proceeds.
- 11.84.110 Payment by insurance company, bank, etc.—No additional liability.
- 11.84.120 Rights of persons without notice dealing with slayer or abuser.
- 11.84.130 Record of conviction as evidence against claimant of property.
- 11.84.140 Slayer determination—Conviction—Preponderance of evidence.
- 11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence.
- 11.84.160 Abuser determination—Evidence factors.
- 11.84.170 Abuser—When entitled to property interest.
- 11.84.180 Application—Relation to other laws.
- 11.84.900 Chapter to be construed broadly.

11.84.010 Definitions. As used in this chapter:

(1) "Abuser" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult.

(2) "Decedent" means:

(a) Any person whose life is taken by a slayer; or

(b) Any deceased person who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser.

(3) "Financial exploitation" has the same meaning as provided in RCW 74.34.020, as enacted or hereafter amended.

(4) "Property" includes any real and personal property and any right or interest therein.

(5) "Slayer" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person.

(6) "Vulnerable adult" has the same meaning as provided in RCW 74.34.020. [2009 c 525 § 1; 1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.]

11.84.020 Slayer or abuser not to benefit from death.

No slayer or abuser shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following. [2009 c 525 § 2; 1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

11.84.025 Disposition of retirement system proceeds payable to slayer or abuser. Proceeds payable to a slayer or abuser as the beneficiary of any benefits flowing from one of the retirement systems listed in RCW 41.50.030, by virtue of the decedent's membership in the department of retirement systems or by virtue of the death of decedent, shall be paid instead as designated in RCW 41.04.273. [2009 c 525 § 3; 1998 c 292 § 502.]

Additional notes found at www.leg.wa.gov

11.84.030 Slayer or abuser deemed to predecease decedent. The slayer or abuser shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his or her estate to the slayer or abuser under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or surviving domestic partner or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [2009 c 525 § 4; 2008 c 6 § 624; 1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.84.040 Distribution of decedent's property. Property which would have passed to or for the benefit of the slayer or abuser by devise or legacy from the decedent shall be distributed as if he or she had predeceased the decedent. [2009 c 525 § 5; 1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

11.84.050 Distribution of property held jointly with slayer or abuser. (1) One-half of any property held by the slayer or abuser and the decedent as joint tenants, joint own-

ers or joint obligees shall pass upon the death of the decedent to his or her estate, and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the slayer or abuser and the decedent, any enrichment which would have accrued to the slayer or abuser as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer or abuser becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [2009 c 525 § 6; 1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

11.84.060 Reversion and vested remainder. Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he or she held the particular estate or if the particular estate is held by a third person it shall remain in his or her hands for such period. [2010 c 8 § 2086; 1965 c 145 § 11.84.060. Prior: 1955 c 141 § 6.]

11.84.070 Property subject to divestment, etc. Any interest in property whether vested or not, held by the slayer or abuser, subject to be divested, diminished in any way or extinguished, if the decedent survives him or her or lives to a certain age, shall be held by the slayer or abuser during his or her lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [2009 c 525 § 7; 1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

11.84.080 Contingent remainders and future interests. As to any contingent remainder or executory or other future interest held by the slayer or abuser, subject to become vested in him or her or increased in any way for him or her upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he or she had predeceased the decedent, he or she shall be deemed to have so predeceased the decedent;

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [2009 c 525 § 8; 1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

11.84.090 Property appointed—Powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of the slayer or abuser shall be distributed as if the slayer or abuser had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer or abuser, subject to be divested by the exercise by the

decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer or abuser. [2009 c 525 § 9; 1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

11.84.100 Insurance proceeds. (1) Insurance proceeds payable to the slayer or abuser as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or abuser or his or her estate as secondary beneficiary to him or her and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer or abuser, the proceeds shall be paid to the estate of the decedent upon the death of the slayer or abuser, unless the policy names some person other than the slayer or abuser or his or her estate as secondary beneficiary, or unless the slayer or abuser by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his or her interest in the policy if he or she had been living. [2009 c 525 § 10; 1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

11.84.110 Payment by insurance company, bank, etc.—No additional liability. Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer or abuser as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer or financial exploitation by an abuser. [2009 c 525 § 11; 1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

11.84.120 Rights of persons without notice dealing with slayer or abuser. The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer or abuser have been adjudicated, purchases or has agreed to purchase, from the slayer or abuser for value and without notice property which the slayer or abuser would have acquired except for the terms of this chapter, but all proceeds received by the slayer or abuser from such sale shall be held by him or her in trust for the persons entitled to the property under the provisions of this chapter, and the slayer or abuser shall also be liable both for any portion of such proceeds which he or she may have dissipated and for any difference between the actual value of the property and the amount of such proceeds. [2009 c 525 § 12; 1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

11.84.130 Record of conviction as evidence against claimant of property. Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in evidence against a claimant of property in any civil proceeding arising under this chapter. [2009 c 525 § 13; 1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

Evidence, proof of public documents: Chapter 5.44 RCW; Rules of court: CR 44.

11.84.140 Slayer determination—Conviction—Preponderance of evidence. (1) A final judgment of conviction for the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section.

(2) In the absence of a criminal conviction, a superior court finding by a preponderance of the evidence that a person participated in the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section. [2009 c 525 § 14.]

11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence. (1) A final judgment of conviction for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, is conclusive for purposes of determining whether a person is an abuser under this section.

(2) In the absence of a criminal conviction, a superior court finding by clear, cogent, and convincing evidence that a person participated in conduct constituting financial exploitation against the decedent is conclusive for purposes of determining whether a person is an abuser under this section. [2009 c 525 § 15.]

11.84.160 Abuser determination—Evidence factors. (1) In determining whether a person is an abuser for purposes of this chapter, the court must find by clear, cogent, and convincing evidence that:

(a) The decedent was a vulnerable adult at the time the alleged financial exploitation took place; and

(b) The conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.

(2) A finding of abuse by the department of social and health services is not admissible for any purpose in any claim or proceeding under this chapter.

(3) Except as provided in subsection (2) of this section, evidence of financial exploitation is admissible if it is not inadmissible pursuant to the rules of evidence. [2009 c 525 § 16.]

11.84.170 Abuser—When entitled to property interest. Notwithstanding the provisions of this chapter:

(1) An abuser is entitled to acquire or receive an interest in property or any other benefit described in this chapter if the court determines by clear, cogent, and convincing evidence that the decedent:

(a) Knew of the financial exploitation; and

(b) Subsequently ratified his or her intent to transfer the property interest or benefit to that person.

(2) The court may consider the record of proceedings and in its discretion allow an abuser to acquire or receive an interest in property or any other benefit described in this chapter in any manner the court deems equitable. In determining what is equitable, the court may consider, among other things:

(a) The various elements of the decedent's dispositive scheme;

(b) The decedent's likely intent given the totality of the circumstances; and

(c) The degree of harm resulting from the abuser's financial exploitation of the decedent. [2009 c 525 § 17.]

11.84.180 Application—Relation to other laws. The provisions of this act are supplemental to, and do not derogate from, any other statutory or common law proceedings, theories, or remedies including, but not limited to, the common law allocation of the burden of proof or production among the parties. [2009 c 525 § 21.]

11.84.900 Chapter to be construed broadly. This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed. [2010 c 8 § 2087; 1998 c 292 § 503; 1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 11.86 RCW DISCLAIMER OF INTERESTS

Sections

11.86.011	Definitions.
11.86.021	Disclaimer of interest authorized.
11.86.031	Contents of disclaimer—Time and filing requirements—Fee.
11.86.041	Disposition of disclaimed interest.
11.86.051	When disclaimer barred—Exception.
11.86.061	Effect of spendthrift or similar restriction.
11.86.071	Liability for distribution—Effect of disclaimer.
11.86.080	Rights under other statutes or rules not abridged.
11.86.090	Interests existing on June 7, 1973.

11.86.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

- By intestate succession;
- Under a will;
- Under a trust;
- By succession to a disclaimed interest;
- By virtue of an election to take against a will;
- By creation of a power of appointment;

(g) By exercise or nonexercise of a power of appointment;

(h) By an inter vivos gift, whether outright or in trust;

(i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;

(j) Under an insurance or annuity contract;

(k) By surviving the death of another joint tenant;

(l) Under an employee benefit plan;

(m) Under an individual retirement account, annuity, or bond;

(n) Under a community property agreement; or

(o) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(3) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.

(4) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(5) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

(7) "Date of the transfer" means:

(a) For an inter vivos transfer, the date of the creation of the interest; or

(b) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

A joint tenancy interest of a deceased joint tenant shall be deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy. [1989 c 34 § 1.]

11.86.021 Disclaimer of interest authorized. (1) A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares or assets, in the manner provided in RCW 11.86.031.

(2) Likewise, a beneficiary may so disclaim through an agent or attorney so authorized by written instrument.

(3) A personal representative, guardian, attorney-in-fact if authorized under a durable power of attorney under chapter 11.94 RCW, or other legal representative of the estate of a minor, incompetent, or deceased beneficiary, may so disclaim on behalf of the beneficiary, with or without court order, if:

(a) The legal representative deems the disclaimer to be in the best interests of those interested in the estate of the beneficiary and of those who take the disclaimed interest because of the disclaimer, and not detrimental to the best interests of the beneficiary; and

(b) In the case of a guardian, no order has been issued under RCW 11.92.140 determining that the disclaimer is not in the best interests of the beneficiary. [1989 c 34 § 2.]

11.86.031 Contents of disclaimer—Time and filing requirements—Fee. (1) The disclaimer must:

- Be in writing;
- Be signed by the disclaimant;
- Identify the interest to be disclaimed; and
- State the disclaimer and the extent thereof.

(2) The disclaimer must be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

(a) The date the beneficiary attains the age of twenty-one years;

(b) The date of the transfer;

(c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested; or

(d) December 17, 2010, if the date of the transfer is the date of the death of the creator of the interest and the creator dies after December 31, 2009, and before December 18, 2010.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee established under *RCW 36.18.016.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated. [2011 c 113 § 3; 1995 c 292 § 4; 1989 c 34 § 3.]

***Reviser's note:** The fee specified in RCW 36.18.016 for the filing of a disclaimer was deleted by section 18, chapter 457, Laws of 2005.

Finding—Retroactive application—Application—Construction—Effective date—2011 c 113: See notes following RCW 11.108.090.

11.86.041 Disposition of disclaimed interest. (1)

Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the beneficiary provides otherwise in the disclaimer, in addition to the interests disclaimed, the beneficiary shall also be deemed to have disclaimed the minimum of all interests in the disclaimed property necessary to make the disclaimer a qualified disclaimer for purposes of section 2518 of the Internal Revenue Code.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) Unless the instrument creating the interest directs to the contrary, a beneficiary whose interest in a devise or

bequest under a will has been disclaimed shall be deemed to have died for purposes of RCW 11.12.110.

(6) In the case of a disclaimer of property over which the disclaimant has any power to direct the beneficial enjoyment of the disclaimed property, the disclaimant shall also be deemed to have disclaimed any power to direct the beneficial enjoyment of the disclaimed property, unless the power is limited by an ascertainable standard relating to the health, education, support, or maintenance of any person as described in section 2041 or 2514 of the Internal Revenue Code and applicable regulations adopted under those sections. This subsection applies unless the disclaimer specifically provides otherwise. This subsection shall not be deemed to otherwise prevent such a disclaimant from acting as trustee or personal representative over disclaimed property. [1999 c 43 § 1; 1997 c 252 § 73; 1991 c 7 § 1; 1989 c 34 § 4.]

Additional notes found at www.leg.wa.gov

11.86.051 When disclaimer barred—Exception. (1) A beneficiary may not disclaim an interest if:

(a) The beneficiary has accepted the interest or a benefit thereunder;

(b) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;

(c) The interest has been sold or otherwise disposed of pursuant to judicial process; or

(d) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary.

(2) Notwithstanding the provisions of subsection (1)(a) through (c) of this section, a beneficiary's receipt of a benefit from property shall not necessarily bar such beneficiary's disclaimer of an interest in the same property when, prior to the date of the transfer of the interest to be disclaimed, the beneficiary already owned an interest in such property in joint tenancy, as community property, or otherwise. Any such receipt, in the absence of clear and convincing evidence to the contrary, shall be presumed to be an enjoyment or use of the interest the beneficiary already owned, and only after such interest and any benefit from such interest have been exhausted, shall the beneficiary be deemed to have received or accepted any part of the interest to be disclaimed. [2000 c 24 § 1; 1989 c 34 § 5.]

11.86.061 Effect of spendthrift or similar restriction.

A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction. [1989 c 34 § 6.]

11.86.071 Liability for distribution—Effect of disclaimer.

No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that the disclaimer is barred as provided in RCW 11.86.051. [1989 c 34 § 7.]

11.86.080 Rights under other statutes or rules not abridged. This chapter shall not abridge the right of any person, apart from this chapter, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest. [1973 c 148 § 9.]

11.86.090 Interests existing on June 7, 1973. Any interest which exists on June 7, 1973 but which has not then become indefeasibly vested, or the taker of which has not then become finally ascertained, or of the existence of the transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.031. However, for the purposes of RCW 11.86.031(2), the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer. [1989 c 34 § 8; 1973 c 148 § 10.]

Chapter 11.88 RCW GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS

Sections

- 11.88.005 Legislative intent.
- 11.88.008 "Professional guardian" defined.
- 11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal.
- 11.88.020 Qualifications.
- 11.88.030 Petition—Contents—Hearing.
- 11.88.040 Notice and hearing, when required—Service—Procedure.
- 11.88.045 Legal counsel and jury trial—Proof—Medical report—Examinations—Waiver.
- 11.88.080 Guardians nominated by will or durable power of attorney.
- 11.88.090 Guardian ad litem—Mediation—Appointment—Qualifications—Notice of and statement by guardian ad litem—Hearing and notice—Attorneys' fees and costs—Registry—Duties—Report—Responses—Fee.
- 11.88.093 Ex parte communications—Removal.
- 11.88.095 Disposition of guardianship petition.
- 11.88.097 Guardian ad litem—Fees.
- 11.88.100 Oath and bond of guardian or limited guardian.
- 11.88.105 Reduction in amount of bond.
- 11.88.107 When bond not required.
- 11.88.110 Law on executors' and administrators' bonds applicable.
- 11.88.115 Notice to department of revenue.
- 11.88.120 Modification or termination of guardianship—Procedure.
- 11.88.125 Standby limited guardian or limited guardian.
- 11.88.127 Guardianship—Incapacitated person—Letters of guardianship.
- 11.88.130 Transfer of jurisdiction and venue.
- 11.88.140 Termination of guardianship or limited guardianship.
- 11.88.150 Administration of deceased incapacitated person's estate.
- 11.88.160 Guardianships involving veterans.
- 11.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Rules of court: Guardians capacity to sue: CR 17.

judgment for and settlement of claims of minors: SPR 98.16W.
probate proceedings, application for fee, notice: SPR 98.12W.
suit in own name: CR 17.

Allowing child to work without permit, penalty: RCW 26.28.060.

Bank soliciting appointment as guardian, penalty: RCW 30.04.260.

Costs against guardian of infant plaintiff: RCW 4.84.140.

Declaratory judgments: Chapter 7.24 RCW.

Embezzlement by guardian: RCW 9A.56.010(22)(b).

Eminent domain

by corporations, service on guardian of minors, idiots, lunatics or distracted persons: RCW 8.20.020.

by state, service of notice on guardian: RCW 8.04.020.

Excise taxes, liability for, notice to department of revenue: RCW 82.32.240.

(2012 Ed.)

Guardian may sue in own name: **Rules of court:** CR 17.

Habeas corpus, granting of writ to guardian: RCW 7.36.020.

Incapacitated person, appearance by guardian: RCW 4.08.060.

Industrial insurance benefits, appointment of guardian to manage: RCW 51.04.070.

Investment of trust funds, guardians subject to chapter 30.24 RCW: RCW 11.100.015.

Investments, authorized

generally: Chapter 30.24 RCW.

housing authority bonds: RCW 35.82.220.

United States corporation bonds: RCW 39.60.010.

Jurors, challenge of, guardian and ward relationship ground for implied bias: RCW 4.44.180.

Lawful use of force: RCW 9A.16.020.

Limitation of actions by ward against guardian, recovery of real estate sold by guardian: RCW 4.16.070.

Mental illness, proceedings: Chapter 71.05 RCW.

Minor's personal service contracts, recovery by guardian barred: RCW 26.28.050.

Motor vehicle financial responsibility, release by injured minor executed by guardian: RCW 46.29.120.

Name, action for change of—Fees: RCW 4.24.130.

Partition: Chapter 7.52 RCW.

Public assistance grants, appointment of guardian to receive: RCW 74.08.280, 74.12.250.

Real estate licenses, guardian exemption: RCW 18.85.151.

Savings and loan association, guardian may be member of: RCW 33.20.060.

Seduction, action for seduction of ward: RCW 4.24.020.

State hospital patients, superintendent custodian of estate: RCW 72.23.230.

Support and care of dependent child, liability of guardian, procedure, judgment: RCW 13.34.160, 13.34.161.

Uniform veterans' guardianship act: Chapter 73.36 RCW.

Veterans: RCW 73.04.140.

Volunteer firefighters' relief, appointment of guardian for firefighter: RCW 41.24.140.

Washington uniform transfers to minors act: Chapter 11.114 RCW.

Witness, guardian as: RCW 5.60.030.

11.88.005 Legislative intent. It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs. [1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

Additional notes found at www.leg.wa.gov

11.88.008 "Professional guardian" defined. As used in this chapter, "professional guardian" means a guardian appointed under this chapter who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons. [1997 c 312 § 2.]

Additional notes found at www.leg.wa.gov

11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse or

domestic partner of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor. [2008 c 6 § 802; 2005 c 236 § 3; (2005 c 236 § 2 expired January 1, 2006); 2004 c 267 § 139; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Effective date—2005 c 236 § 3: "Section 3 of this act takes effect January 1, 2006." [2005 c 236 § 5.]

Expiration date—2005 c 236 § 2: "Section 2 of this act expires January 1, 2006." [2005 c 236 § 4.]

Findings—2005 c 236: "The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest." [2005 c 236 § 1.]

Effective dates—2004 c 267: See note following RCW 29A.08.010.

Additional notes found at www.leg.wa.gov

11.88.020 Qualifications. (1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person

and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(a) under eighteen years of age except as otherwise provided herein;

(b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training video or web cast for lay guardians made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court under RCW 11.92.043 or 11.92.040. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training video or web cast by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court shall require the completion of the required training video or web cast by a date no later than ninety days after the appointment. [2011 c 329 § 1; 1997 c 312 § 1; 1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Banks and trust companies may act as guardian: RCW 11.36.010.

Additional notes found at www.leg.wa.gov

11.88.030 Petition—Contents—Hearing. (1) Any person or entity may petition for the appointment of a qualified person, certified professional guardian, or financial institution authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment; and

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2) The petition shall include evidence of successful completion of any training required under RCW 11.88.020 by the proposed guardian or limited guardian unless the petitioner requests expedited appointment due to emergent circumstances.

(3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE
PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(6) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is

requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date. [2011 c 329 § 2; 2009 c 521 § 36; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

11.88.040 Notice and hearing, when required—Service—Procedure. Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without

admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition. [2008 c 6 § 803; 1995 c 297 § 2; 1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 § 11.88.040. Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.88.045 Legal counsel and jury trial—Proof—Medical report—Examinations—Waiver. (1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a

jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician, psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician, psychologist, or advanced registered nurse practitioner;

(b) The education and experience of the physician, psychologist, or advanced registered nurse practitioner pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;

(e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which

all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective. [2001 c 148 § 1; 1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

11.88.080 Guardians nominated by will or durable power of attorney. When either parent is deceased, the surviving parent of any minor child or a sole parent of a minor child, may by last will or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of executing the instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event of the death or incapacity of such parent. Every guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's nomination unless the court finds, based upon evidence presented at a hearing on the matter, that the individual nominated in the surviving parent's will or durable power of attorney is not qualified to serve. [2005 c 97 § 11; 1990 c 122 § 7; 1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

Additional notes found at www.leg.wa.gov

11.88.090 Guardian ad litem—Mediation—Appointment—Qualifications—Notice of and statement by guardian ad litem—Hearing and notice—Attorneys' fees and costs—Registry—Duties—Report—Responses—Fee.

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180 shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

- (a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;
- (b) Establish the terms of the mediation; and
- (c) Allocate the cost of the mediation pursuant to *RCW 11.96.140.

(3) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best inter-

ests of the alleged incapacitated person, who shall be a person found or known by the court to:

- (a) Be free of influence from anyone interested in the result of the proceeding; and
- (b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

- (b) To be eligible for the registry a person shall:
 - (i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:
 - (A) Level of formal education;
 - (B) Training related to the guardian ad litem's duties;
 - (C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the training as described in (e) of this subsection. The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

(e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(f) The superior court shall require utilization of the model program developed by the advisory group as described in (e) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem

shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse or domestic partner, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are

defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(11) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty. [2008 c 6 § 804; 2000 c 124 § 1; 1999 c 360 § 1; 1996 c 249 § 10; 1995 c 297 § 4; 1991 c 289 § 5; 1990 c 122 § 8; 1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

Rules of court: *Judgment for and settlement of claims of minors:* SPR 98.16W.

***Reviser's note:** RCW 11.96.140 was repealed by 1999 c 42 § 637, effective January 1, 2000.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent—1996 c 249: See note following RCW 2.56.030.

Costs against guardian of infant plaintiff: RCW 4.84.140.

District judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.

Execution against for costs against infant plaintiff: RCW 4.84.140.

Incapacitated persons

appearance in civil action: RCW 4.08.060.

appointment for civil actions: RCW 4.08.060.

Liability for costs against infant plaintiffs: RCW 4.84.140.

Minors, for

appearance in civil actions: RCW 4.08.050.

appointment for civil actions: RCW 4.08.050.

district court proceedings: RCW 12.04.150.

Registration of land titles, appointment for minors: RCW 65.12.145.

Additional notes found at www.leg.wa.gov

11.88.093 Ex parte communications—Removal. A guardian ad litem shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case. [2000 c 124 § 10.]

11.88.095 Disposition of guardianship petition. (1) In determining the disposition of a petition for guardianship, the court’s order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;

(d) A date for the court to review the account or report and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment and follow the provisions of RCW 11.92.050. The court may review and approve an account or report without conducting a hearing;

(e) A directive to the clerk of court to issue letters of guardianship as specified in RCW 11.88.127;

(f) Whether the guardian ad litem shall continue acting as guardian ad litem;

(g) Whether a review hearing shall be required upon the filing of the inventory;

(h) Whether a review hearing is required upon filing the initial personal care plan;

(i) The authority of the guardian, if any, for investment and expenditure of the ward’s estate;

(j) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW 11.92.150; and

(k) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

(2012 Ed.)

GUARDIANSHIP SUMMARY

Date Guardian Appointed:
Due Date for Report and Accounting:
Date of Next Review:
Letters Expire On:
Bond Amount: \$
Restricted Account Agreements Required:
Due Date for Inventory:
Due Date for Care Plan:

Incapacitated Person Guardian of: [] Estate [] Person (IP)

Table with 2 columns: Incapacitated Person (IP) and Guardian of. Rows include Name, Address, Phone, and Facsimile.

Table with 3 columns: Interested Parties, Address, and Relation to IP. Multiple empty rows for data entry.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person. [2011 c 329 § 4; 1995 c 297 § 5; 1991 c 289 § 6; 1990 c 122 § 9.]

Additional notes found at www.leg.wa.gov

11.88.097 Guardian ad litem—Fees. The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is

able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule. [2000 c 124 § 13.]

11.88.100 Oath and bond of guardian or limited guardian. Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his or her guardianship or limited guardianship to the superior court of the county of, from time to time as he or she shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months. [2010 c 8 § 2088; 1990 c 122 § 10; 1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

Citation of surety on bond: RCW 11.92.056.

Suretyship: Chapter 19.72 RCW.

Additional notes found at www.leg.wa.gov

11.88.105 Reduction in amount of bond. In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits. [1990 c 122 § 11; 1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

Additional notes found at www.leg.wa.gov

11.88.107 When bond not required. In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived. [1990 c 122 § 12; 1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

Additional notes found at www.leg.wa.gov

11.88.110 Law on executors' and administrators' bonds applicable. All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians. [1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

11.88.115 Notice to department of revenue. Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.88.120 Modification or termination of guardianship—Procedure. (1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad

litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court. [1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Additional notes found at www.leg.wa.gov

11.88.125 Standby limited guardian or limited guardian. (1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(j). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon

approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in *RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. [2011 c 329 § 5; 2008 c 6 § 805; 1991 c 289 § 8; 1990 c 122 § 15; 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

*Reviser's note: RCW 11.92.040 was amended by 1990 c 122 § 20, deleting the language relating to informed consent to necessary medical procedures. For later enactment, see RCW 11.92.043.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

11.88.127 Guardianship—Incapacitated person—Letters of guardianship. (1) A guardian or limited guardian may not act on behalf of the incapacitated person without valid letters of guardianship. Upon appointment and fulfilling all legal requirements to serve, as set forth in the court's order, the clerk shall issue letters of guardianship to a guardian or limited guardian appointed by the court. All letters of guardianship must be in the following form, or a substantially similar form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

IN THE MATTER OF THE GUARDIANSHIP OF Incapacitated Person

Guardianship Cause No.

LETTERS OF GUARDIANSHIP OR LIMITED GUARDIANSHIP

Date letters expire

THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE FOLLOWING:

On the day of, 20 the Court appointed to serve as:

- Guardian of the Person Full Limited
Guardian of the Estate Full Limited

for, the incapacitated person, in the above referenced matter.

The Guardian has fulfilled all legal requirements to serve, including, but not limited to: Taking and filing the oath; filing any bond consistent with the court's order; filing any blocked account agreement consistent with the court's order; and appointing a resident agent for a nonresident guardian.

The Court, having found the Guardian duly qualified, now makes it known is authorized as the Guardian for designated in the Court's order as referenced above.

The next filing and reporting deadline in this matter is on the ... day of,

THESE LETTERS ARE NO LONGER VALID ON

These letters can only be renewed by a new court order. If the court grants an extension, new letters will be issued.

This matter is before the Honorable of Superior Court, the seal of the Court being affixed this of

State of Washington)
) ss.
County of

I,, Clerk of the Superior Court of said County and State, certify that this document represents true and correct Letters of Guardianship in the above entitled case, entered upon the record on this day of,

These Letters remain in full force and effect until the date of expiration set forth above.
The seal of Superior Court has been affixed and witnessed by my hand this day of,

....., Clerk of Superior Court

By, Deputy

.....
(Signature of Deputy)

(2) The court shall order the clerk to issue letters of guardianship that are valid for a period of up to five years from the anniversary date of the appointment. When determining the time period for which the letters will be valid, the court must consider: The length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian. [2011 c 329 § 6.]

11.88.130 Transfer of jurisdiction and venue. The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred. [1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

Additional notes found at www.leg.wa.gov

11.88.140 Termination of guardianship or limited guardianship. (1) **TERMINATION WITHOUT COURT ORDER.** A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) **TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION.** A guardianship for the benefit of a minor may be terminated upon the minor’s attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor’s funds in the guardian’s possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor’s estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian’s powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian’s lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19 ; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian’s lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19

Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) **TERMINATION ON COURT ORDER.** A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) **EFFECT OF TERMINATION.** When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates. [2011 c 329 § 7; 1991 c 289 § 9; 1990 c 122 § 17; 1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination: RCW 11.92.053.

Additional notes found at www.leg.wa.gov

11.88.150 Administration of deceased incapacitated person's estate. (1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by *RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited guardian of his or her estate has power

under the letters issued to him or her and subject to the direction of the court to administer the estate as the estate of the deceased incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his or her letters of guardianship or limited guardianship, he or she shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his or her account, and may apply to the complete administration of the estate of the deceased incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims. [2010 c 8 § 2089; 1990 c 122 § 18; 1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

***Reviser's note:** The reference to RCW 68.50.150 appears to be erroneous. RCW 68.50.160 was apparently intended. RCW 68.50.150 was subsequently repealed by 2005 c 365 § 161.

Settlement of estate upon termination: RCW 11.92.053.

Additional notes found at www.leg.wa.gov

11.88.160 Guardianships involving veterans. For guardianships involving veterans see chapter 73.36 RCW. [1990 c 122 § 13.]

Additional notes found at www.leg.wa.gov

11.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and

applicable to individuals in state registered domestic partnerships. [2009 c 521 § 35.]

Chapter 11.90 RCW

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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GENERAL PROVISIONS

11.90.010 Short title. This chapter may be cited as the uniform adult guardianship and protective proceedings jurisdiction act. [2009 c 81 § 1.]

Effective date—2009 c 81: "This act takes effect January 1, 2010." [2009 c 81 § 24.]

11.90.020 Definitions. In this chapter:

(1) "Adult" means an individual who has attained eighteen years of age.

(2) "Guardian of the estate" means a person appointed by the court to administer the property of an adult, and includes a conservator appointed by the court in another state.

(3) "Guardian of the person" or "guardian" means a person appointed by the court to make decisions regarding the person of an adult.

(4) "Guardianship order" means an order appointing a guardian of the person or guardian of the estate.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian of the person or guardian of the estate is sought or has been issued.

(2012 Ed.)

(6) "Incapacitated person" means an adult for whom a guardian of the person or guardian of the estate has been appointed.

(7) "Party" means the respondent, petitioner, guardian of the person or guardian of the estate, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a guardian of the estate or other order related to management of an adult's property, including an order issued by a court in another state appointing a conservator.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian of the person is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. [2009 c 81 § 2.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.030 Foreign country treatment. A court of this state may treat a foreign country as if it were a state for the purpose of applying this chapter. [2009 c 81 § 3.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.040 Communications with out-of-state courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. [2009 c 81 § 4.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.050 Requests between in-state and out-of-state courts. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under (a) of this subsection or any other proceeding, any evidence otherwise produced under (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under (c) or (d) of this subsection;

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Sec. 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. [2009 c 81 § 5.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.060 Testimony and documentary evidence from another state. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule. [2009 c 81 § 6.]

Effective date—2009 c 81: See note following RCW 11.90.010.

JURISDICTION

11.90.200 Definitions. (1) In this chapter:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of

temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under RCW 11.90.220 and 11.90.400(5) whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services. [2009 c 81 § 7.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.210 Exclusive jurisdictional basis. This chapter provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult under chapters 11.88 and 11.92 RCW. [2009 c 81 § 8.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.220 Appointing a guardian or issuing a protective order. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in RCW 11.90.250;

(3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under RCW 11.90.230 are met. [2009 c 81 § 9.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.230 Special jurisdiction. (1) A court of this state lacking jurisdiction under RCW 11.90.220 has special jurisdiction to do any of the following:

(a) In an emergency, process a petition under RCW 11.88.090 for appointment of a guardian for a respondent who is physically present in this state, for a term not exceeding ninety days;

(b) Issue a protective order with respect to a respondent's real or tangible personal property located in this state if a petition for appointment of a guardian or a conservator for the respondent is pending or has been approved in another state;

(c) Appoint a guardian of the person or guardian of the estate for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to RCW 11.90.400.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment. [2009 c 81 § 10.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.240 Exclusive jurisdiction for court appointing a guardian or issuing a protective order. Except as otherwise provided in RCW 11.90.230, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. [2009 c 81 § 11.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.250 In-state court declining jurisdiction. (1) A court of this state having jurisdiction under RCW 11.90.220 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(2012 Ed.)

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian of the person or guardian of the estate. [2009 c 81 § 12.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.260 Jurisdiction required by unjustifiable conduct. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in RCW 11.90.250(3); and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of RCW 11.90.220.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter. [2009 c 81 § 13.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.270 Notice of petition requirements when not respondent's home state on filing date. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state. [2009 c 81 § 14.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.280 Rules when guardian appointment or protective order petition is filed in Washington and another state. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under RCW 11.90.230(1) (a) or (b), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state

and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under RCW 11.90.220, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to RCW 11.90.220 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under RCW 11.90.220, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum. [2009 c 81 § 15.]

Effective date—2009 c 81: See note following RCW 11.90.010.

TRANSFER OF GUARDIANSHIP

11.90.400 Procedure for transfer of guardianship to an out-of-state court. (1) A guardian of the person or guardian of the estate appointed in this state may petition the court to transfer the guardianship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian of the person or guardian of the estate.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian of the person or guardian of the estate to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a guardianship of the estate and shall direct the guardian of the estate to petition for guardianship of the estate or conservatorship in the other state if the court is satisfied that the guardianship of the estate will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in RCW 11.90.200(2);

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship of the person or guardianship of the estate upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to RCW 11.90.410; and

(b) The documents required to terminate a guardianship of the person or guardianship of the estate in this state. [2009 c 81 § 16.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.410 Procedures for transfer of guardianship or conservatorship to Washington. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to RCW 11.90.400, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian of the person or guardian of the estate in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to RCW 11.90.400 transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship of the person or guardianship of the estate needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or guardian of the estate in this state if the court has jurisdiction to make an

appointment other than by reason of the provisional order of transfer. [2009 c 81 § 17.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.420 Registering out-of-state guardianship. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. [2009 c 81 § 18.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.430 Registering an out-of-state protective order. If a guardian of the estate or conservator has been appointed in another state and a petition for a protective order is not pending in this state, the guardian of the estate or conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. [2009 c 81 § 19.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.440 Enforcement of guardianship or protective order from another state. (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order. [2009 c 81 § 20.]

Effective date—2009 c 81: See note following RCW 11.90.010.

MISCELLANEOUS PROVISIONS

11.90.450 Uniformity. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 81 § 21.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.460 Application of the federal electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2009 c 81 § 22.]

Effective date—2009 c 81: See note following RCW 11.90.010.

11.90.470 Application. (1) This chapter applies to guardianship and protective proceedings filed on or after January 1, 2010.

(2012 Ed.)

(2) RCW 11.90.010 through 11.90.060 and 11.90.400 through 11.90.460 apply to proceedings filed before January 1, 2010, regardless of whether a guardianship or protective order has been issued. [2009 c 81 § 23.]

Effective date—2009 c 81: See note following RCW 11.90.010.

Chapter 11.92 RCW GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN

Sections

11.92.010	Guardians or limited guardians under court control—Legal age.
11.92.035	Claims.
11.92.040	Duties of guardian or limited guardian in general.
11.92.043	Additional duties.
11.92.050	Intermediate accounts or reports—Hearing—Order.
11.92.053	Settlement of estate upon termination.
11.92.056	Citation of surety on bond.
11.92.060	Guardian to represent incapacitated person—Compromise of claims—Service of process.
11.92.090	Sale, exchange, lease, or mortgage of property.
11.92.096	Guardian access to certain held assets.
11.92.100	Petition—Contents.
11.92.110	Sale of real estate.
11.92.115	Return and confirmation of sale.
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11.92.125	Broker's fee and closing expenses—Sale, exchange, mortgage, or lease of real estate.
11.92.130	Performance of contracts.
11.92.140	Court authorization for actions regarding guardianship funds.
11.92.150	Request for special notice of proceedings.
11.92.160	Citation for failure to file account or report.
11.92.170	Removal of property of nonresident incapacitated person.
11.92.180	Compensation and expenses of guardian or limited guardian—Attorney's fees—Department of social and health services clients paying part of costs—Rules.
11.92.185	Concealed or embezzled property.
11.92.190	Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement.

Veterans: RCW 73.04.140.

11.92.010 Guardians or limited guardians under court control—Legal age. Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old. [1975 1st ex.s. c 95 § 18; 1971 c 28 § 5; 1965 c 145 § 11.92.010. Prior: 1923 c 72 § 1; 1917 c 156 § 202; RRS § 1572. Formerly RCW 11.92.010 and 11.92.020.]

Age of majority: RCW 26.28.010.

Married persons deemed to be of full age: RCW 26.28.020.

Termination of guardianship or limited guardianship upon attainment of legal age: RCW 11.88.140.

Transfer of jurisdiction and venue: RCW 11.88.130.

11.92.035 Claims. (1) **DUTY OF GUARDIAN TO PAY.** A guardian of the estate is under a duty to pay from the estate all just claims against the estate of the incapacitated person, whether they constitute liabilities of the incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude the guardian's personal liability

for his or her own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to (a) the expenses of administration including guardian’s fees, attorneys’ fees, and court costs; (b) prior claims for the care, maintenance and education of the incapacitated person and of the person’s dependents over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an incapacitated person, or against the guardian of his or her estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations. After ten days’ notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof and after consideration of any defenses or objections by the guardian, the court may enter an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed. [1990 c 122 § 19; 1975 1st ex.s. c 95 § 19; 1965 c 145 § 11.92.035.]

Actions against guardian: RCW 11.92.060.

Claims against estate of deceased incompetent person or individual with a disability: RCW 11.88.150.

Disbursement for claims on termination of guardianship or limited guardianship: RCW 11.88.140.

Additional notes found at www.leg.wa.gov

11.92.040 Duties of guardian or limited guardian in general. It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian’s appointment a verified inventory of all the property of the incapacitated person which comes into the guardian’s possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian’s or limited guardian’s appointment, and also within ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration for court approval, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian’s estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of

the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian’s bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian’s petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) All court orders approving accounts or reports filed by a guardian or limited guardian must contain a guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:
Due Date for Report and Accounting:
Date of Next Review:
Letters Expire On:
Bond Amount: \$
Restricted Account: Agreements Required:

Incapacitated Person Guardian of: [] Estate [] Person
(IP)

Name:	Name:
Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Standby Guardian	Address	Relation to IP

Interested Parties	Address	Relation to IP

(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person. However, the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof;

(8) To provide evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (a) Was appointed prior to July 22, 2011; (b) is not a certified

professional guardian or financial institution authorized under RCW 11.88.020; and (c) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian. The superior court may, upon (i) petition by the guardian or limited guardian; or (ii) any other method as provided by local court rule: (A) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days; and

(9) To provide evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian. [2011 c 329 § 9; 1991 c 289 § 10; 1990 c 122 § 20; 1985 c 30 § 9. Prior: 1984 c 149 § 12; 1979 c 32 § 2; 1977 ex.s. c 309 § 13; 1975 1st ex.s. c 95 § 20; 1965 c 145 § 11.92.040; prior: 1957 c 64 § 1; 1955 c 205 § 15; 1941 c 83 § 1; 1917 c 156 § 205; Rem. Supp. 1941 § 1575; prior: 1895 c 42 § 1; Code 1881 § 1614.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Compulsory school attendance law, duty to comply with: RCW 28A.225.010.

Disabled person, defined: RCW 11.88.010.

Additional notes found at www.leg.wa.gov

11.92.043 Additional duties. It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period;

(i)(i) Evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (A) Was appointed prior to July 22, 2011; (B) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (C) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian.

(ii) The superior court may, upon (A) petition by the guardian or limited guardian; or (B) any other method as provided by local court rule:

(I) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

(II) Extend the time period for completion of the training requirement for ninety days; and

(j) Evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or sub-

sequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.217.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040. [2011 c 329 § 3; 1991 c 289 § 11; 1990 c 122 § 21.]

Additional notes found at www.leg.wa.gov

11.92.050 Intermediate accounts or reports—Hearing—Order.

(1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, the court shall enter an order settling the guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report.

(2) Upon such account or report being filed, the court may, in its discretion, set a date for the hearing and require the service of the guardian's report or account and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended or as specified by the court; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.

(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at the hearing, the court shall enter an order for one or more of the following actions:

(a) Entering an order to show cause and requiring the guardian to appear at a show cause hearing. At the hearing

the court may take action to protect the incapacitated person, including, but not limited to, removing the guardian or limited guardian pursuant to RCW 11.88.120 and appointing a successor;

(b) Directing the clerk to extend the letters, for good cause shown, for no more than ninety days, to permit the guardian to file his or her account or report;

(c) Requiring the completion of any approved guardianship training made available to the guardian by the court;

(d) Appointing a guardian ad litem subject to the requirements in RCW 11.88.090;

(e) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

(6) The procedure established in this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043. [2011 c 329 § 10; 1995 c 297 § 6; 1990 c 122 s 23; 1975 1st ex.s. c 95 s 21; 1965 c 145 s 11.92.050. Prior: 1943 c 29 s 1; Rem. Supp. 1943 s 1575-1.]

Additional notes found at www.leg.wa.gov

11.92.053 Settlement of estate upon termination.

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud. [2011 c 329 § 8; 1995 c 297 § 7; 1990 c 122 § 24; 1965 c 145 § 11.92.053.]

(2012 Ed.)

Administration of deceased incompetent's estate: RCW 11.88.150.

Procedure on removal or death of guardian—Delivery of estate to successor: RCW 11.88.120.

Termination of guardianship: RCW 11.88.140.

Additional notes found at www.leg.wa.gov

11.92.056 Citation of surety on bond. If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1990 c 122 § 25; 1975 1st ex.s. c 95 § 22; 1965 c 145 § 11.92.056.]

Additional notes found at www.leg.wa.gov

11.92.060 Guardian to represent incapacitated person—Compromise of claims—Service of process. (1) **GUARDIAN MAY SUE AND BE SUED.** When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) **JOINDER, AMENDMENT AND SUBSTITUTION.** When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the incapacitated person shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person. If the appoint-

ment of the guardian of the estate is terminated, his or her successor may be substituted; if the incapacitated person dies, his or her personal representative may be substituted; if the incapacitated person is no longer incapacitated the person may be substituted.

(3) **GARNISHMENT, ATTACHMENT AND EXECUTION.** When there is a guardian of the estate, the property and rights of action of the incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incapacitated person or the guardian of the person's estate as such.

(4) **COMPROMISE BY GUARDIAN.** Whenever it is proposed to compromise or settle any claim by or against the incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) **LIMITED GUARDIAN.** Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian. [1990 c 122 § 26; 1975 1st ex.s. c 95 § 23; 1965 c 145 § 11.92.060. Prior: 1917 c 156 § 206; RRS § 1576; prior: 1903 c 100 § 1; Code 1881 § 1611; 1860 p 226 § 328.]

Rules of court: *SPR 98.08W, 98.10W, 98.16W.*

Action against guardian deemed claim: RCW 11.92.035.

Additional notes found at www.leg.wa.gov

11.92.090 Sale, exchange, lease, or mortgage of property. Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper. [1990 c 122 § 27; 1975 1st ex.s. c 95 § 24; 1965 c 145 § 11.92.090. Prior: 1917 c 156 § 212; RRS § 1582; prior: Code 1881 § 1620; 1855 p 17 § 14.]

Additional notes found at www.leg.wa.gov

11.92.096 Guardian access to certain held assets. (1) All financial institutions as defined in *RCW 30.22.040(12), all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (hereafter individually and collectively referenced as "institution") shall provide the guardian access and control over the asset(s) described in (a)(vii) of

this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (which names shall be the same);

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-guardian being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;

(viii) The date the guardian assumed control over the assets; and

(ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and

(b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship.

The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(2) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(3) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and shall not be subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the guardian access and control over the asset, including but not limited to delivery of the asset to the guardian. [1991 c 289 § 13.]

***Reviser's note:** RCW 30.22.040 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (8).

11.92.100 Petition—Contents. Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incapacitated person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incapacitated person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is requested for the liquidation thereof.

(8) The age of the incapacitated person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application. [1990 c 122 § 28; 1975 1st ex.s. c 95 § 25; 1965 c 145 § 11.92.100. Prior: 1917 c 156 § 213; RRS § 1583; prior: Code 1881 § 1621; 1860 p 228 § 338; 1855 p 17 § 15.]

Additional notes found at www.leg.wa.gov

11.92.110 Sale of real estate. The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs. [1990 c 122 § 29; 1975 1st ex.s. c 95 § 26; 1965 c 145 § 11.92.110. Prior: 1917 c 156 § 214; RRS § 1524; prior: Code 1881 § 1623; 1860 p 229 § 340.]

Additional notes found at www.leg.wa.gov

11.92.115 Return and confirmation of sale. The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incapacitated person and of the person's estate. In the case of a sale by negotiation

the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. [2010 c 8 § 2090; 1990 c 122 § 30; 1975 1st ex.s. c 95 § 27; 1965 c 145 § 11.92.115.]

Additional notes found at www.leg.wa.gov

11.92.120 Confirmation conclusive. No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud. [1975 1st ex.s. c 95 § 28; 1965 c 145 § 11.92.120. Prior: 1917 c 156 § 215; RRS § 1585; prior: Code 1881 § 1625; 1860 p 229 § 343.]

11.92.125 Broker's fee and closing expenses—Sale, exchange, mortgage, or lease of real estate. In connection with the sale, exchange, mortgage, lease, or grant of easement or license in any property, the court may authorize the guardian or limited guardian to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting title insurance, survey, revenue stamps, and other necessary costs and expenses in connection therewith. [1977 ex.s. c 309 § 15; 1965 c 145 § 11.92.125.]

Additional notes found at www.leg.wa.gov

11.92.130 Performance of contracts. If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW. [1990 c 122 § 31; 1975 1st ex.s. c 95 § 29; 1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]

Additional notes found at www.leg.wa.gov

11.92.140 Court authorization for actions regarding guardianship funds. The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96A RCW, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated

person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital or domestic partnership property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a minor under chapter 11.114 RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse or deceased domestic partner, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties. [2008 c 6 § 807; 1999 c 42 § 616; 1991 c 193 § 32; 1990 c 122 § 32; 1985 c 30 § 10. Prior: 1984 c 149 § 13.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.92.150 Request for special notice of proceedings.

At any time after the issuance of letters of guardianship in the estate of any person and/or incapacitated person, any person interested in the estate, or in the incapacitated person, or any relative of the incapacitated person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the guardianship or limited guardianship of the person and/or estate is pending, a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated. [1990 c 122 § 33; 1985 c 30 § 11. Prior: 1984 c 149 § 14; 1975 1st ex.s. c 95 § 30; 1969 c 18 § 1; 1965 c 145 § 11.92.150; prior: 1925 ex.s. c 104 § 1; RRS § 1586-1.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.92.160 Citation for failure to file account or report.

Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts. [1990 c 122 § 34; 1975 1st ex.s. c 95 § 31; 1965 c 145 § 11.92.160. Prior: 1925 ex.s. c 104 § 2; RRS § 1586-2.]

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

Additional notes found at www.leg.wa.gov

11.92.170 Removal of property of nonresident incapacitated person. Whenever it is made to appear that it would be in the best interests of the incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the incapacitated person. [1990 c 122 § 35; 1977 ex.s. c 309 § 16; 1975 1st ex.s. c 95 § 32; 1965 c 145 § 11.92.170. Prior: 1917 c 156 § 217; RRS § 1587; prior: Code 1881 § 1628; 1873 p 320 § 323.]

Additional notes found at www.leg.wa.gov

11.92.180 Compensation and expenses of guardian or limited guardian—Attorney’s fees—Department of social and health services clients paying part of costs—Rules. A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney’s fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney’s fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule. [1995 c 297 § 8; 1994 c 68 § 1; 1991 c 289 § 12; 1990 c 122 § 36; 1975 1st ex.s. c 95 § 33; 1965 c 145 § 11.92.180. Prior: 1917 c 156 § 216; RRS § 1586; prior: Code 1881 § 1627; 1855 p 19 § 25.]

Rules of court: *SPR 98.12W.*

Additional notes found at www.leg.wa.gov

11.92.185 Concealed or embezzled property. The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his or her possession or having concealed,

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embezzled, conveyed or disposed of any of the property of the estate of incapacitated persons subject to administration under this title. [1990 c 122 § 37; 1975 1st ex.s. c 95 § 34; 1965 c 145 § 11.92.185.]

Additional notes found at www.leg.wa.gov

11.92.190 Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement. No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incapacitated person shall be void and of no force or effect. This section does not apply to the detention of a minor as provided in chapter 70.96A or 71.34 RCW.

Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incapacitated person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record. [1996 c 249 § 11; 1977 ex.s. c 309 § 14.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

Chapter 11.94 RCW POWER OF ATTORNEY

Sections

11.94.010	Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument.
11.94.020	Effect of death, disability, or incompetence of principal—Acts without knowledge.
11.94.030	Banking transactions.
11.94.040	Liability for reliance on power of attorney document.
11.94.043	Durable power of attorney—Revocation or termination.
11.94.046	Durable power of attorney—Validity.
11.94.050	Attorney or agent granted principal’s powers—Powers to be specifically provided for—Transfer of resources by principal’s attorney or agent.
11.94.060	Conveyance or encumbrance of homestead.
11.94.070	Limitations on powers to benefit attorneys-in-fact.
11.94.080	Termination of marriage or state registered domestic partnership.
11.94.090	Court petition.
11.94.100	Persons allowed to file court petition.
11.94.110	Ruling on court petition.
11.94.120	Award of costs on court petition.
11.94.130	Applicability of dispute resolution provisions to court petition.
11.94.140	Notice of hearing on court petition.
11.94.150	Mental health treatment decisions—Compensation of agent prohibited—Reimbursement of expenses allowed.
11.94.900	Application of 1984 c 149 §§ 26-31 as of January 1, 1985.
11.94.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. (1) Whenever a principal designates another as his or her attorney-in-fact or agent, by a power of attorney in writing, and the writing contains the

words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3)(a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, state registered domestic partner, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

(4) A parent or guardian, by a properly executed power of attorney, may authorize an attorney-in-fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be

effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(5) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.

(6) The authority of any guardian of the person of any minor child shall supersede the authority of a designated attorney-in-fact to make health care decisions for the minor only after such designated guardian has been appointed by the court.

(7) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control. [2007 c 156 § 31; 2005 c 97 § 12; 2003 c 283 § 27; 1995 c 297 § 9; 1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.94.020 Effect of death, disability, or incompetence of principal—Acts without knowledge. (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by RCW 11.94.010, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney-in-fact, or agent, stating that the attorney did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [1985 c 30 § 26. Prior: 1984 c 149 § 27; 1977 ex.s. c 234 § 27; 1974 ex.s. c 117 § 53.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.94.030 Banking transactions. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney-in-fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney-in-fact or agent has all the powers the principal would

have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any contrary provision in any agreement governing the safe deposit box. [1985 c 30 § 27. Prior: 1984 c 149 § 28.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.94.040 Liability for reliance on power of attorney document. (1) Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability.

(2) If the attorney-in-fact presents the power of attorney to a third person and requests the person to accept the attorney-in-fact's authority to act for the principal, and also presents to the person an acknowledged affidavit or declaration signed under penalty of perjury in the form designated in RCW 9A.72.085, signed and dated contemporaneously with presenting the power of attorney, which meets the requirements of subsection (3) of this section, and the person accepting the power of attorney has examined the power of attorney and confirmed the identity of the attorney-in-fact, then the person's reliance on the power of attorney is presumed to be without negligence and in good faith in reasonable reliance, which presumption may be rebutted by clear and convincing evidence that the person accepting the power of attorney knew or should have known that one or more of the material statements in the affidavit is untrue. It shall not be found that an organization knew or should have known of circumstances that would revoke or terminate the power of attorney or limit or modify the authority of the attorney-in-fact, unless the individual accepting the power of attorney on behalf of the organization knew or should have known of the circumstances.

(3) An affidavit presented pursuant to subsection (2) of this section shall state that:

(a) The person presenting himself or herself as the attorney-in-fact and signing the affidavit or declaration is the person so named in the power of attorney;

(b) If the attorney-in-fact is named in the power of attorney as a successor attorney-in-fact, the circumstances or conditions stated in the power of attorney that would cause that person to become the acting attorney-in-fact have occurred;

(c) To the best of the attorney-in-fact's knowledge, the principal is still alive;

(d) To the best of the attorney-in-fact's knowledge, at the time the power of attorney was signed, the principal was competent to execute the document and was not under undue influence to sign the document;

(e) All events necessary to making the power of attorney effective have occurred;

(f) The attorney-in-fact does not have actual knowledge of the revocation, termination, limitation, or modification of the power of attorney or of the attorney-in-fact's authority;

(g) The attorney-in-fact does not have actual knowledge of the existence of other circumstances that would limit,

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modify, revoke, or terminate the power of attorney or the attorney-in-fact's authority to take the proposed action;

(h) If the attorney-in-fact was married to the principal at the time of execution of the power of attorney, then at the time of signing the affidavit or declaration, the marriage of the principal and the attorney-in-fact has not been dissolved or declared invalid; and

(i) The attorney-in-fact is acting in good faith pursuant to the authority given under the power of attorney.

(4) Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not prevent a party from reasonably relying on the document.

(5) Unless the document contains a requirement that it be filed for record to be effective, a person may place reasonable reliance on it regardless of whether it is so filed. [2001 c 203 § 2; 1985 c 30 § 28. Prior: 1984 c 149 § 29.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.94.043 Durable power of attorney—Revocation or termination. The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order. [1989 c 211 § 2.]

11.94.046 Durable power of attorney—Validity. (1) A durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989, that specifically authorizes an attorney-in-fact to make decisions relating to the health care of the principal shall be deemed valid, except for the exemptions provided for in RCW 11.94.010(3).

(2) Nothing in this chapter affects the validity of a decision made under a durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989. [1989 c 211 § 3.]

11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent. (1)

Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent shall have all the powers the principal would have if alive and competent, the attorney-in-fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to exercise the principal's rights to distribute property in trust or cause a trustee to distribute property in trust to the extent consistent with the terms

of the trust agreement; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust; or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy. [2011 c 327 § 4; 2001 c 203 § 12; 1989 c 87 § 1; 1985 c 30 § 29. Prior: 1984 c 149 § 30.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.94.060 Conveyance or encumbrance of homestead. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney-in-fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney-in-fact or agent has all the powers the principal would have if alive and competent, then these powers include the right to convey or encumber the principal's homestead. [1985 c 30 § 30. Prior: 1984 c 149 § 31.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.94.070 Limitations on powers to benefit attorneys-in-fact. (1) The restrictions in RCW 11.95.100 through 11.95.150 on the power of a person holding a power of appointment apply to attorneys-in-fact holding the power to appoint to or for the benefit of the powerholder.

(2) This section applies retroactively to July 25, 1993. [1994 c 221 § 67.]

***Reviser's note:** "Section 3 of this act" is erroneous. This reference was apparently intended to be to section 67. The error arose in the renumbering of sections in the engrossing of amendments to Substitute House Bill No. 2270 (1994 c 221).

Additional notes found at www.leg.wa.gov

11.94.080 Termination of marriage or state registered domestic partnership. (1) An appointment of a principal's spouse or state registered domestic partner, as attorney-in-fact, including appointment as successor or coattorney-in-fact, under a power of attorney shall be revoked upon entry of a decree of dissolution or legal separation or declaration of invalidity of the marriage or termination of the state registered domestic partnership of the principal and the attorney-in-fact, unless the power of attorney or the decree provides otherwise. The effect of this revocation shall be as if the spouse or state registered domestic partner, resigned as attorney-in-fact, or if named as successor attorney-in-fact, renounced the appointment, as of the date of entry of the decree or declaration or filing of the certificate of termination of the state registered domestic partnership, and the power of attorney shall otherwise remain in effect with respect to appointments of other persons as attorney-in-fact for the prin-

cipal or procedures prescribed in the power of attorney to appoint other persons, and any terms relating to service by persons as attorney-in-fact.

(2) This section applies to all decrees of dissolution and declarations of invalidity of marriage entered after July 22, 2001. [2007 c 156 § 14; 2001 c 203 § 1.]

11.94.090 Court petition. (1) A person designated in RCW 11.94.100 may file a petition requesting that the court:

(a) Determine whether the power of attorney is in effect or has terminated;

(b) Compel the attorney-in-fact to submit the attorney-in-fact's accounts or report the attorney-in-fact's acts as attorney-in-fact to the principal, the spouse or domestic partner of the principal, the guardian of the person or the estate of the principal, or to any other person required by the court in its discretion, if the attorney-in-fact has failed to submit an accounting or report within sixty days after written request from the person filing the petition, however, a government agency charged with the protection of vulnerable adults may file a petition upon the attorney-in-fact's refusal or failure to submit an accounting upon written request and shall not be required to wait sixty days;

(c) Ratify past acts or approve proposed acts of the attorney-in-fact;

(d) Order the attorney-in-fact to exercise or refrain from exercising authority in a power of attorney in a particular manner or for a particular purpose;

(e) Modify the authority of an attorney-in-fact under a power of attorney;

(f) Remove the attorney-in-fact on a determination by the court of both of the following:

(i) The attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney; and

(ii) The removal of the attorney-in-fact is in the best interest of the principal;

(g) Approve the resignation of the attorney-in-fact and approve the final accountings of the resigning attorney-in-fact if submitted, subject to any orders the court determines are necessary to protect the principal's interests;

(h) Confirm the authority of a successor attorney-in-fact to act under a power of attorney upon removal or resignation of the previous attorney-in-fact;

(i) Compel a third person to honor the authority of an attorney-in-fact, provided that a third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances;

(j) Order the attorney-in-fact to furnish a bond in an amount the court determines to be appropriate.

(2) The petition shall contain a statement identifying the principal's known immediate family members, and any other persons known to petitioner to be interested in the principal's welfare or the principal's estate, stating which of said persons have an interest in the action requested in the petition and explaining the determination of who is interested in the petition. [2008 c 6 § 808; 2001 c 203 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.94.100 Persons allowed to file court petition. (1) A petition may be filed under RCW 11.94.090 by any of the following persons:

- (a) The attorney-in-fact;
- (b) The principal;
- (c) The spouse or domestic partner of the principal;
- (d) The guardian of the estate or person of the principal;

or

(e) Any other interested person, as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary, and that the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests.

(2) Notwithstanding RCW 11.94.080, the principal may specify in the power of attorney by name certain persons who shall have no authority to bring a petition under RCW 11.94.090 with respect to the power of attorney. This provision is enforceable:

(a) If the person so named is not at the time of filing the petition the guardian of the principal;

(b) If at the time of signing the power of attorney the principal was represented by an attorney who advised the principal regarding the power of attorney and who signed a certificate at the time of execution of the power of attorney, stating that the attorney has advised the principal concerning his or her rights, the applicable law, and the effect and consequences of executing the power of attorney; or

(c) If (a) and (b) of this subsection do not apply, unless the person so named can establish that the principal was unduly influenced by another or under mistaken beliefs when excluding the person from the petition process, or unless the person named is a government agency charged with protection of vulnerable adults. [2008 c 6 § 809; 2001 c 203 § 4.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.94.110 Ruling on court petition. In ruling on a petition filed under RCW 11.94.090 and ordering any relief, the court must consider the best interests of the principal and will order relief that is the least restrictive to the exercise of the power of attorney while still adequate in the court's view to serve the principal's best interests. Upon entry of an order ruling on a petition, the court's oversight of the attorney-in-fact's actions and of the operation of the power of attorney ends unless another petition is filed under this chapter or unless the order specifies further court involvement that is necessary for a resolution of the issues raised in the petition. [2001 c 203 § 5.]

11.94.120 Award of costs on court petition. In any proceeding commenced by the filing of a petition under RCW 11.94.090 by a person other than the attorney-in-fact, the court may in its discretion award costs, including reasonable attorneys' fees, to any person participating in the proceedings from any other person participating in the proceedings, or from the assets of the principal, as the court determines to be equitable. In determining what is equitable in making the award, the court must consider whether the petition was filed without reasonable cause, and order costs and fees paid by the attorney-in-fact individually only if the court

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determines that the attorney-in-fact has clearly violated his or her fiduciary duties or has refused without justification to cooperate with the principal or the principal's guardian or personal representative. In a proceeding to compel a third party to accept a power of attorney, the court may order costs, including reasonable attorneys' fees, to be paid by the third party only if the court determines that the third party did not have a good faith concern that the attorney in fact's exercise of authority would be improper. To the extent this section is inconsistent with RCW 11.96A.150, this section controls the award of costs and attorneys' fees in proceedings brought under RCW 11.94.090. [2001 c 203 § 6.]

11.94.130 Applicability of dispute resolution provisions to court petition. The provisions of chapter 11.96A RCW, except for RCW 11.96A.260 through 11.96A.320, are applicable to proceedings commenced by the filing of a petition under RCW 11.94.090. [2001 c 203 § 7.]

11.94.140 Notice of hearing on court petition. (1) The following persons are entitled to notice of hearing on any petition under RCW 11.94.090:

- (a) The principal;
- (b) The principal's spouse or domestic partner;
- (c) The attorney-in-fact;
- (d) The guardian of the estate or person of the principal;
- (e) Any other person identified in the petition as being interested in the action requested in the petition, or identified by the court as having a right to notice of the hearing. If a person would be excluded from bringing a petition under RCW 11.94.100(2), then that person is not entitled to notice of the hearing.

(2) Notwithstanding subsection (1) of this section, if the whereabouts of the principal are unknown or the principal is otherwise unavailable to receive notice, the court may waive the requirement of notice to the principal, and if the principal's spouse is similarly unavailable to receive notice, the court may waive the requirement of notice to the principal's spouse.

(3) Notice must be given as required under chapter 11.96A RCW, except that the parties entitled to notice shall be determined under this section. [2008 c 6 § 810; 2001 c 203 § 8.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.94.150 Mental health treatment decisions—Compensation of agent prohibited—Reimbursement of expenses allowed. No person appointed by a principal as an agent to make mental health treatment decisions pursuant to a mental health advance directive under chapter 71.32 RCW shall be compensated for the performance of his or her duties as an agent to make mental health treatment decisions. This section does not prohibit an agent from receiving reimbursement for reasonable expenses incurred in the performance of his or her duties under chapter 71.32 RCW. [2003 c 283 § 28.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

11.94.900 Application of 1984 c 149 §§ 26-31 as of January 1, 1985. Sections 26 through 31, chapter 149, Laws of 1984 apply as of January 1, 1985, to all existing or subsequently executed instruments but shall not apply to any instrument the terms of which expressly or impliedly make those sections inapplicable. [1985 c 30 § 140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.94.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 37.]

Chapter 11.95 RCW POWERS OF APPOINTMENT

Sections

11.95.010	Releases.
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11.95.040	Releases—Effect of RCW 11.95.010 through 11.95.050 on prior releases.
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11.95.100	Exercise of power in favor of holder—Limitations.
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11.95.130	Exercise of power in favor of holder—Inference of law.
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11.95.150	Exercise of power in favor of holder—Cause of action.
11.95.160	Lapse of a power—Intent not to exercise a power—Treatment.
11.95.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.95.010 Releases. Any power exercisable by deed, will, or otherwise, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder and delivered as hereinafter provided. [1985 c 30 § 31. Prior: 1984 c 149 § 33; 1955 c 160 § 1. Formerly RCW 64.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.95.020 Releases—Partial releases. A power which is releasable may be released with respect to the whole or any part of the property subject to the power and may also be released in such manner as to reduce or limit the persons or objects, or classes of persons or objects, in whose favor the

powers would otherwise be exercisable. A release of a power shall not be deemed to make imperative a power which was not imperative prior to the release, unless the instrument of release expressly so provides. [1985 c 30 § 32. Prior: 1984 c 149 § 34; 1955 c 160 § 2. Formerly RCW 64.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.95.030 Releases—Delivery. (1) In order to be effective as a release of a power, the instrument of release must be delivered to any trustee or co-trustee of the property, and the person holding the property, to which the power relates.

(2) In addition to the delivery required under subsection (1) of this section, a copy of the instrument of release may be published in a legal newspaper of general circulation in the county in which all or the greatest portion of the property is located at least once within thirty days of the delivery required under subsection (1) of this section, which shall from the time of publication constitute notice of the release to all other persons. [1995 c 91 § 1; 1985 c 30 § 33. Prior: 1984 c 149 § 35; 1955 c 160 § 3. Formerly RCW 64.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.95.040 Releases—Effect of RCW 11.95.010 through *11.95.050 on prior releases. The enactment of RCW 11.95.010 through *11.95.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed. [1985 c 30 § 34. Prior: 1984 c 149 § 36; 1955 c 160 § 4. Formerly RCW 64.24.040.]

***Reviser's note:** RCW 11.95.050 was repealed by 1995 c 91 § 2.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.95.060 Exercise of powers of appointment. (1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power. Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made if the person had no knowledge that the power had been exercised and had made a reasonable effort to determine if the power had been exercised. A testamentary residuary clause which does not manifest an intent to exercise a power is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised. [1989 c 33 § 1; 1985 c 30 § 36. Prior: 1984 c 149 § 38.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.95.070 Application of chapter—Application of 1984 c 149. (1) This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

(2) This chapter does not apply to the powers of a personal representative of the estate of a decedent when acting in the capacity of personal representative.

(3) Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984 and the 1984 recodification of RCW 64.24.050 as *RCW 11.95.050 apply as of January 1, 1985, to all existing or subsequently created powers of appointment, but not to any power of appointment that expressly or by necessary implication makes those 1984 changes inapplicable. [2006 c 360 § 8; 1985 c 30 § 37. Prior: 1984 c 149 § 39.]

*Reviser's note: RCW 11.95.050 was repealed by 1995 c 91 § 2.

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.95.100 Exercise of power in favor of holder—Limitations. If the standard governing the exercise of a lifetime or a testamentary power of appointment does not clearly indicate that a broader or more restrictive power of appointment is intended, the holder of the power of appointment may exercise it in his or her favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under the section. [1993 c 339 § 7.]

Additional notes found at www.leg.wa.gov

11.95.110 Exercise of power in favor of holder—Disregard of provision conferring absolute or similar power—Power of removal. If the holder of a lifetime or testamentary power of appointment may exercise the power in his or her own favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a provision of the instrument creating the power of appointment that purports to confer "absolute," "sole," "complete," "conclusive," or a similar discretion shall be disregarded in the exercise of that power in

favor of the holder, and that power may then only be exercised reasonably and in accordance with the ascertainable standards set forth in RCW 11.95.100 and this section. A person who has the right to remove or replace a trustee does not possess nor may the person be deemed to possess, by virtue of having that right, the power of the trustee who is subject to removal or to replacement. [1993 c 339 § 8.]

Additional notes found at www.leg.wa.gov

11.95.120 Exercise of power in favor of holder—Income under marital deduction—Spousal power of appointment. Notwithstanding any provision of RCW 11.95.100 through 11.95.150 seemingly to the contrary, RCW 11.95.100 through 11.95.150 do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.95.100 through 11.95.150 do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections. [1993 c 339 § 9.]

Additional notes found at www.leg.wa.gov

11.95.130 Exercise of power in favor of holder—Inference of law. RCW 11.95.100 through 11.95.150 do not raise an inference that the law of this state prior to July 25, 1993, was different than contained in RCW 11.95.100 through 11.95.150. [1993 c 339 § 10.]

Additional notes found at www.leg.wa.gov

11.95.140 Exercise of power in favor of holder—Applicability. (1)(a) RCW 11.95.100 and 11.95.110 respectively apply to a power of appointment created:

(i) Under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed after July 25, 1993, unless the terms of the instrument refer specifically to RCW 11.95.100 or 11.95.110 respectively and provide expressly to the contrary; or

(ii) Under a testamentary trust, trust agreement, or declaration of trust executed before July 25, 1993, unless:

(A) The trust is revoked, or amended to provide otherwise, and the terms of any amendment specifically refer to RCW 11.95.100 or 11.95.110, respectively, and provide expressly to the contrary;

(B) All parties in interest, as defined in RCW 11.98.240(3), elect affirmatively, in the manner prescribed in RCW 11.98.240(4), not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96A.080 obtains a judicial determination that the application of this

subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, for the purposes of this section a codicil to a will, an amendment to a trust, or an amendment to another instrument that created the power of appointment in question shall not be deemed to cause that instrument to be executed after July 25, 1993, unless the codicil or amendment clearly shows an intent to have RCW 11.95.100 or 11.95.110 apply.

(2) Notwithstanding subsection (1) of this section, RCW 11.95.100 through 11.95.150 shall apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed prior to July 25, 1993, if the person who created the power of appointment had on July 25, 1993, the power to revoke, amend, or modify the instrument creating the power of appointment, unless:

(a) The terms of the instrument specifically refer to RCW 11.95.100 or 11.95.110 respectively and provide expressly to the contrary; or

(b) The person creating the power of appointment was not competent, on July 25, 1993, to revoke, amend, or modify the instrument creating the power of appointment and did not regain his or her competence to revoke, amend, or modify the instrument creating the power of appointment on or before his or her death or before the time at which the instrument could no longer be revoked, amended, or modified by the person. [1999 c 42 § 617; 1997 c 252 § 74; 1993 c 339 § 11.]

Additional notes found at www.leg.wa.gov

11.95.150 Exercise of power in favor of holder—Cause of action. RCW 11.95.100 through 11.95.140 neither create a new cause of action nor impair an existing cause of action that, in either case, relates to a power that was exercised before July 25, 1993. RCW 11.95.100 through 11.95.140 neither create a new cause of action nor impair an existing cause of action that in either case relates to a power proscribed, limited, or qualified under RCW 11.95.100 through 11.95.140. [1993 c 339 § 12.]

Additional notes found at www.leg.wa.gov

11.95.160 Lapse of a power—Intent not to exercise a power—Treatment. A person shall not be treated as having made a disposition in trust for the use of that individual by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose, notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power. [2006 c 360 § 12.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.95.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply

equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 38.]

Chapter 11.96A RCW

TRUST AND ESTATE DISPUTE RESOLUTION

Sections

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11.96A.900	Short title.
11.96A.901	Captions not law—1999 c 42.
11.96A.902	Effective date—1999 c 42.

11.96A.010 Purpose. The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [This] chapter also provides for judicial resolution of disputes if other methods are unsuccessful. [1999 c 42 § 102.]

11.96A.020 General power of courts—Intent—Plenary power of the court. (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court. [1999 c 42 § 103.]

11.96A.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by

federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset; and

(h) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to

whom would meet notice requirements as provided in RCW 11.96A.120;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

(8) "Trustee" means any acting and qualified trustee of the trust. [2011 c 327 § 5; 2009 c 525 § 20; 2008 c 6 § 927; 2006 c 360 § 10; 2002 c 66 § 2; 1999 c 42 § 104.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.96A.040 Original jurisdiction in probate and trust matters—Powers of court. (1) The superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:

- (a) When a resident of the state dies;
- (b) When a nonresident of the state dies in the state; or
- (c) When a nonresident of the state dies outside the state.

(2) The superior court of every county has original subject matter jurisdiction over trusts and all matters relating to trusts.

(3) The superior courts may: Probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' nonprobate assets; administer and settle matters that relate to nonprobate assets and arise under chapter 11.18 or 11.42 RCW; administer and settle all matters relating to trusts; administer and settle matters that relate to powers of attorney; award processes and cause to come before them all persons whom the courts deem it necessary to examine; order and cause to be issued all such writs and any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under this section.

(4) The subject matter jurisdiction of the superior court applies without regard to venue. A proceeding or action by or before a superior court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action. [2001 c 203 § 9; 1999 c 42 § 201.]

11.96A.050 Venue in proceedings involving probate or trust matters. (1) Venue for proceedings pertaining to trusts shall be:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a beneficiary of the trust entitled to notice under RCW 11.97.010, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW shall be determined under the provisions of those chapters.

(4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1), (2), or (3) of this section, shall be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (4) of this section.

(6) Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal's residence, except for good cause shown.

(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court. [2011 c 327 § 6; 2001 c 203 § 10; 1999 c 42 § 202.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.060 Exercise of powers—Orders, writs, process, etc. The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title. [1999 c 42 § 203.]

11.96A.070 Statutes of limitation. (1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence. A report that includes the following information is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust:

(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(iii) The trustee's compensation for the period;

(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

(i) The removal, resignation, or death of the trustee;

(ii) The termination of the beneficiary's interest in the trust; or

(iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long-standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative shall be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual

(10) If the initial hearing is not a hearing on the merits or does not result in a resolution of all issues of fact and all issues of law, the court may enter any order it deems appropriate, which order may (a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter. [2001 c 14 § 1; 1999 c 42 § 303.]

11.96A.110 Notice in judicial proceedings under this title requiring notice. (1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the foregoing, notice that is provided in an electronic transmission and electronically transmitted complies with this section if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

(2) Proof of the service, mailing, or electronic delivery required in this section must be made by affidavit or declaration filed at or before the hearing.

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in RCW 23B.01.400. [2011 c 327 § 8; 1999 c 42 § 304.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.115 Discovery. In all matters governed by this title, discovery shall be permitted only in the following matters:

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court. [2006 c 360 § 11.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.96A.120 Application of doctrine of virtual representation. (1) With respect to a particular matter that affects a trust, probate estate, guardianship estate, or property subject to a power of attorney, in which the interests of such fiduciary estate and the beneficiaries are not in conflict:

(a) A guardian may represent and bind the estate that the guardian controls;

(b) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(c) A trustee may represent and bind the beneficiaries of the trust; and

(d) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(2) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

(3) Any notice requirement in this title is satisfied if:

(a) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person;

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event; and

(d) The holder of a general power of appointment, exercisable either during the power holder's life or by will, or a limited power of appointment, exercisable either during the power holder's life or by will, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, and the creditors of his or her estate, may accept notice and virtually represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, to the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute.

(4) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(5) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice

or who is otherwise represented under this section. [2011 c 327 § 9; 2008 c 6 § 928; 2001 c 203 § 11; 1999 c 42 § 305.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.96A.125 Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform. The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings or binding nonjudicial procedure under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence, or the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence, that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement. [2011 c 327 § 11.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.127 Charitable dispositions by will or trust.

(1) Except as otherwise provided in subsection (2) of this section, with respect to any charitable disposition made in a will or trust, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(a) The disposition does not fail, in whole or in part;

(b) The subject property does not revert to the alternative, residuary, or intestate heirs of the estate or, in the case of a trust, the trustor or the trustor's successors in interest; and

(c) The court may modify or terminate the trust by directing that the property be applied or distributed, in whole or in part, in a manner consistent with the testator's or trustor's charitable purposes.

(2) A provision in the terms of a will or charitable trust that would result in distribution of the property to a noncharitable beneficiary prevails over the power of the court under subsection (1) of this section to modify or terminate the will provision or trust only if, when the provision takes effect:

(a) The property is to revert to the trustor and the trustor is still living; or

(b) Fewer than twenty-one years have elapsed since the following:

(i) In the case of a charitable disposition in trust, the date of the trust's creation or the date the trust became irrevocable; or

(ii) In the case of a charitable disposition in a will, the death of the testator, in the case of a charitable disposition in a will.

(3) For purposes of this title, a charitable purpose is one for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to a community. [2011 c 327 § 10.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.130 Special notice. Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150. [1999 c 42 § 306.]

11.96A.140 Waiver of notice. Notwithstanding any other provision of this title, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian of the estate or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person. [1999 c 42 § 307.]

11.96A.150 Costs—Attorneys' fees. (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10). [2007 c 475 § 5; 1999 c 42 § 308.]

Severability—2007 c 475: See RCW 11.05A.903.

11.96A.160 Appointment of guardian ad litem. (1) The court, upon its own motion or upon request of one or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96A.090 with notice as provided in this section and RCW 11.96A.110.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from the principal of the estate or trust whose beneficiaries are represented. [1999 c 42 § 309.]

11.96A.170 Trial by jury. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions. [1999 c 42 § 310.]

11.96A.180 Execution on judgments. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1999 c 42 § 311.]

11.96A.190 Execution upon trust income or vested remainder—Permitted, when. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1999 c 42 § 312.]

11.96A.200 Appellate review. An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions. [1999 c 42 § 313.]

11.96A.210 Purpose. The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding non-judicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law. [1999 c 42 § 401.]

11.96A.220 Binding agreement. RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions

of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement. [1999 c 42 § 402.]

11.96A.230 Entry of agreement with court—Effect. (1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement's execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust. [2001 c 14 § 2; 1999 c 42 § 403.]

11.96A.240 Judicial approval of agreement. Within thirty days of execution of the agreement by all parties, the special representative may note a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court's determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect. [1999 c 42 § 404.]

11.96A.250 Special representative. (1)(a) The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and: (i) Who is a minor; (ii) who is incompetent or disabled; (iii) who is yet unborn or unascertained; or

(iv) whose identity or address is unknown. The petition may be heard by the court without notice.

(b) In appointing the special representative the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the personal representative or trustee and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence, however, the court may consider any interests that the nominating fiduciary may have in the estate or trust in making the determination.

(c) The special representative may enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. The petition shall be verified. The petition and order appointing the special representative may be in the following form:

CAPTION PETITION FOR APPOINTMENT
OF CASE OF SPECIAL REPRESENTATIVE
 UNDER RCW 11.96A.250

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with RCW 11.96A.250 and shows the court as follows:

1. Petitioner. Petitioner . . . is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument).

2. Issue Concerning (Estate) (Trust) Administration. A question concerning administration of the (estate) (trust) has arisen as to (describe issue, for example: Related to interpretation, construction, administration, distribution). The issues are appropriate for determination under RCW 11.96A.250.

3. Beneficiaries. The beneficiaries of the (estate) (trust) include persons who are unborn, unknown, or unascertained persons, or who are under eighteen years of age.

4. Special Representative. The nominated special representative . . . is a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The nominated special representative does not have an interest in the affected estate or trust and is not related to any person interested in the estate or trust. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen concerning the (estate) (trust). Petitioner believes that proceeding in accordance with the procedures permitted under RCW 11.96A.210 through 11.96A.250 would be in the best interests of the (estate) (trust) and the beneficiaries.

6. Request of Court. Petitioner requests that . . . , . . . an attorney licensed to practice in the State of Washington.

(OR)

. . . . an individual with special skill or training in the administration of estates or trusts

be appointed special representative for those beneficiaries who are not yet adults, as well as for the unborn, unknown, and unascertained beneficiaries, as provided under RCW 11.96A.250.

DATED this . . . day of

.....
(Petitioner or petitioner's
legal representative)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED, 2000, at, Washington.

.....
(Petitioner or other person
having knowledge)

CAPTION ORDER FOR APPOINTMENT
OF CASE OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) described in the Petition to appoint a special representative to address the issues that have arisen concerning the (estate) (trust) and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that . . . is appointed under RCW 11.96A.250 as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in RCW 11.96A.250. The special representative shall be discharged of responsibility with respect to the (estate) (trust) at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order shall be discharged of responsibility, subject to subsequent reappointment under RCW 11.96A.250.

DONE IN OPEN COURT this . . . day of

.....
JUDGE/COURT COMMISSIONER

(2) Upon appointment by the court, the special representative shall file a certification made under penalty of perjury in accordance with RCW 9A.72.085 that he or she (a) is not interested in the estate or trust; (b) is not related to any person interested in the estate or trust; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, and may not be related to a person interested in the estate or trust. The special representative is entitled to reasonable compensation for services that must be paid from the principal of the estate or trust whose beneficiaries are represented.

(4) The special representative shall be discharged from any responsibility and shall have no further duties with respect to the estate or trust or with respect to any person interested in the estate or trust, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW 11.96A.070(3)(c)(i). [2001 c 14 § 3; 1999 c 42 § 405.]

Additional notes found at www.leg.wa.gov

11.96A.260 Findings—Intent. The legislature finds that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. The legislature endorses the use of dispute resolution procedures by means other than litigation. The legislature also finds that the former chapter providing for the nonjudicial resolution of trust, estate, and nonprobate disputes, *chapter 11.96 RCW, has resulted in the successful resolution of thousands of disputes since 1984. The nonjudicial procedure has resulted in substantial savings of public funds by removing those disputes from the court system. Enhancement of the statutory framework supporting the nonjudicial process in *chapter 11.96 RCW would be beneficial and would foster even greater use of nonjudicial dispute methods to resolve trust, estate, and nonprobate disputes. The legislature further finds that it would be beneficial to allow parties to disputes involving trusts, estates, and nonprobate assets to have access to a process for required mediation followed by arbitration using mediators and arbitrators experienced in trust, estate, and nonprobate matters. Finally, the legislature also believes it would be beneficial to parties with disputes in trusts, estates, and nonprobate matters to clarify and streamline the statutory framework governing the procedures governing these cases in the court system.

Therefore, the legislature adopts RCW 11.96A.270 through 11.96A.320, that enhance *chapter 11.96 RCW and allow required mediation and arbitration in disputes involving trusts, estates, and nonprobate matters that are brought to the courts. RCW 11.96A.270 through 11.96A.320 also set forth specific civil procedures for handling trust and estate disputes in the court system. It is intended that the adoption of RCW 11.96A.270 through 11.96A.320 will encourage and direct all parties in trust, estate, and nonprobate matter disputes, and the court system, to provide for expeditious, complete, and final decisions to be made in disputed trust, estate, and nonprobate matters. [1999 c 42 § 501.]

*Reviser’s note: Chapter 11.96 RCW was repealed by 1999 c 42 § 637, effective January 1, 2000.

11.96A.270 Intent—Parties can agree otherwise. The intent of RCW 11.96A.260 through 11.96A.320 is to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed first with mediation and then arbitration before formal judicial procedures may be utilized. Accordingly, any of the requirements or rights under RCW 11.96A.260 through 11.96A.320 are subject to any contrary agreement between the parties or the parties’ virtual representatives. [1999 c 42 § 502.]

11.96A.280 Scope. A party may cause the matter to be presented for mediation and then arbitration, as provided under RCW 11.96A.260 through 11.96A.320. If a party causes the matter to be presented for resolution under RCW 11.96A.260 through 11.96A.320, then judicial resolution of the matter, as provided in RCW 11.96A.060 or by any other civil action, is available only by complying with the mediation and arbitration provisions of RCW 11.96A.260 through 11.96A.320. [1999 c 42 § 503.]

11.96A.290 Superior court—Venue. As used in RCW 11.96A.260 through 11.96A.320, "superior court" means: (1) Before the commencement of any legal proceedings, the appropriate superior court with respect to the matter as provided in RCW 11.96A.040; and (2) if legal proceedings have been commenced with respect to the matter, the superior court in which the proceedings are pending. [1999 c 42 § 504.]

11.96A.300 Mediation procedure. (1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties’ virtual representatives as follows:

(a) If no hearing has been set. If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....
(Party or party’s legal representative)

(b) If a hearing has been set. If a hearing on the matter has been set, by filing and serving notice in substantially the following form at least three days prior to the hearing that has been set on the matter:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless the court determines at the hearing set for . . . o'clock on , (identify place of already set hearing), that mediation shall not apply pursuant to RCW 11.96A.300(3). If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....
(Party or party's legal representative)

(2) Procedure when notice of mediation served before a hearing is set. The following provisions apply when notice of mediation is served before a hearing on the matter is set:

(a) The written notice required in subsection (1)(a) of this section may be served at any time without leave of the court.

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under RCW 11.96A.080 through 11.96A.200, and may also request that the matters in issue be decided at the hearing.

(c) The hearing on the petition objecting to mediation must be heard no later than twenty days after the filing of that petition.

(d) The party objecting to mediation must give notice of the hearing to all other parties at least ten days before the hearing and must include a copy of the petition.

At the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (i) Deciding the matter at that hearing, but only if the petition objecting to mediation contains a request for that relief, (ii) requiring arbitration, or (iii) directing other judicial proceedings.

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation pro-

ceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.

(a) If a petition objecting to mediation is not filed as provided in subsection (3) of this section, or if a court determines that mediation shall apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of qualified and acceptable mediators. If the parties cannot agree on a mediator within ten days after the list is required to be furnished, a party may petition the court to appoint a mediator. All parties may submit a list of qualified and acceptable mediators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified mediator from lists of acceptable mediators provided by the parties.

(b) A qualified mediator must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estate and trust matters, (ii) an individual, who may be an attorney, with special skill or training in the administration of trusts and estates, or (iii) an individual, who may be an attorney, with special skill or training as a mediator. The mediator may not have an interest in an affected estate, trust, or nonprobate asset, and may not be related to a party.

(5) Date for mediation. Upon designation of a mediator by the parties or court appointment of a mediator, the mediator and the parties or the parties' virtual representatives shall establish a date for the mediation. If a date cannot be agreed upon within ten days of the designation or appointment of the mediator, a party may petition the court to set a date for the mediation session.

(6) Duration of mediation. The mediation must last at least three hours unless the matter is earlier resolved.

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under RCW 11.96A.220.

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in RCW 11.96A.320, or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise. [2001 c 14 § 4; 1999 c 42 § 505.]

11.96A.310 Arbitration procedure. (1) When arbitration available. Arbitration under RCW 11.96A.260 through 11.96A.320 is available only if:

(a) A party has first petitioned for mediation under RCW 11.96A.300 and such mediation has been concluded;

(b) The court has determined that mediation under RCW 11.96A.300 is not required and has not ordered that the matter be disposed of in some other manner;

(c) All of the parties or the parties' virtual representatives have agreed not to use the mediation procedures of RCW 11.96A.300; or

(d) The court has ordered that the matter must be submitted to arbitration.

(2) Commencement of arbitration. Arbitration must be commenced as follows:

(a) If the matter is not settled through mediation under RCW 11.96A.300, or the court orders that mediation is not required, a party may commence arbitration by serving written notice of arbitration on all other parties or the parties' virtual representatives. The notice must be served no later than twenty days after the later of the conclusion of the mediation procedure, if any, or twenty days after entry of the order providing that mediation is not required. If arbitration is ordered by the court under RCW 11.96A.300(3), arbitration must proceed in accordance with the order.

(b) If the parties or the parties' virtual representatives agree that mediation does not apply and have not agreed to another procedure for resolving the matter, a party may commence arbitration without leave of the court by serving written notice of arbitration on all other parties or the parties' virtual representatives at any time before or at the initial judicial hearing on the matter. After the initial judicial hearing on the matter, the written notice required in subsection (1) of this section may only be served with leave of the court.

Any notice required by this section must be in substantially the following form:

NOTICE OF ARBITRATION UNDER RCW 11.96A.310

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under RCW 11.96A.310:

(State nature of matter)

The matter must be resolved using the arbitration procedures of RCW 11.96A.310 unless a petition objecting to arbitration is filed with the superior court within twenty days of receipt of this notice. If a petition objecting to arbitration is not filed within the twenty-day period, RCW 11.96A.310 requires you to furnish to all other parties or the parties' virtual representatives a list of acceptable arbitrators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable arbitrators is as follows:)

DATED:

.....
(Party or party's legal representative)

(3) Objection to arbitration. A party may object to arbitration by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The objection to arbitration may be filed at any time unless a written notice of arbitration has been served, in which case the objection to arbitration must be filed and served no later than twenty days after receipt of the written

notice of arbitration. The hearing on the objection to arbitration must be heard no later than twenty days after the filing of that petition. The party objecting to arbitration must give notice of the hearing to all parties at least ten days before the hearing and shall include a copy of the petition. At the hearing, the court shall order that arbitration proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to arbitration, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, but only if the petition objecting to arbitration contains a request for such relief; or (b) directing other judicial proceedings.

(4) Selection of arbitrator; qualifications of arbitrator.

(a) If a petition objecting to arbitration is not filed as provided in subsection (3) of this section, or if a court determines that arbitration must apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of acceptable arbitrators. If the parties cannot agree on an arbitrator within ten days after the list is required to be furnished, a party may petition the court to appoint an arbitrator. All parties may submit a list of qualified and acceptable arbitrators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified arbitrator from lists of acceptable arbitrators provided by the parties.

(b) A qualified arbitrator must be an attorney licensed to practice before the courts of this state having at least five years of experience in trust or estate matters or five years of experience in litigation or other formal dispute resolution involving trusts or estates, or an individual, who may be an attorney, with special skill or training with respect to the matter. The arbitrator may be the same person selected and used as a mediator under the mediation procedures of RCW 11.96A.300.

(5) Arbitration rules. Arbitration must be under chapter 7.06 RCW, mandatory arbitration of civil actions, as follows:

(a) Chapter 7.06 RCW, the superior court mandatory arbitration rules adopted by the supreme court, and any local rules for mandatory arbitration adopted by the superior court apply to this title. If the superior court has not adopted chapter 7.06 RCW, then the local rules for mandatory arbitration applicable in King county apply, except all the duties of the director of arbitration must be performed by the presiding judge of the superior court.

(b) If a party has already filed a petition with the court with respect to the matter that will be the subject of the arbitration proceedings, then all other parties to the arbitration proceedings who have not yet filed a reply thereto must file a reply with the arbitrator within ten days of the date on which the arbitrator is selected or appointed.

(c) The arbitration provisions of this subsection apply to all matters in dispute. The dollar limits and restrictions to monetary damages of RCW 7.06.020 do not apply to arbitrations under this subsection. To the extent any provision in this title is inconsistent with chapter 7.06 RCW or the rules referenced in (a) of this subsection, the provisions of this title control.

(d) The compensation of the arbitrator must be set by written agreement between the parties and the arbitrator. The

arbitrator must be compensated at the arbitrator's stated rate of compensation for acting as an arbitrator of disputes in trusts, estates, and nonprobate matters unless the parties or the parties' virtual representatives agree otherwise.

(e) Unless directed otherwise by the arbitrator in accord with subsection (6) of this section or RCW 11.96A.320, or unless the matter is not resolved by arbitration and the court finally resolving the matter directs otherwise:

(i) Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration, with the details of those costs and fees to be set forth in an arbitration agreement between the arbitrator and all parties to the matter; and

(ii) A party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(f) The arbitrator and the parties shall execute a written agreement setting forth the terms of the arbitration and the process to be followed. This agreement must also contain the fee agreement provided in (d) of this subsection. A dispute as to this agreement must be resolved by the director of arbitration.

(g) The rules of evidence and discovery applicable to civil causes of action before the superior court as defined in RCW 11.96A.290 apply, unless the parties have agreed otherwise or the arbitrator rules otherwise.

(6) Costs of arbitration. The arbitrator may order costs, including reasonable attorneys' fees and expert witness fees, to be paid by any party to the proceedings as justice may require.

(7) Decision of arbitrator. The arbitrator shall issue a final decision in writing within thirty days of the conclusion of the final arbitration hearing. Promptly after the issuance of the decision, the arbitrator shall serve each of the parties to the proceedings with a copy of the written arbitration decision. Proof of service shall be filed with the court. Service shall be made in conformity with CR 5(b) of the rules for superior court.

(8) Arbitration decision may be filed with the court. The arbitrator or any party to the arbitration may file the arbitrator's decision with the clerk of the superior court at any time after its issuance. Notice of such filing shall be promptly given to each party to the arbitration proceedings.

(9) Appeal. (a) The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact. The notice of appeal must be filed within thirty days after the date on which the decision was served on the party filing the notice of appeal. A trial de novo shall then be held, including a right to jury, if demanded.

(b) If an appeal is not filed within the time provided in (a) of this subsection, the arbitration decision is conclusive and binding on all parties. If the arbitrator's decision has been filed with the clerk of the superior court, a judgment shall be entered and may be presented to the court by any party on ten days' prior notice. The judgment when entered shall have the same force and effect as judgments in civil actions.

(10) Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded costs, including expert witness fees and attorneys' fees, in connection with the judi-

cial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW 11.96A.150 or any other similar provision. [2001 c 14 § 5; 1999 c 42 § 506.]

11.96A.320 Petition for order compelling compliance. If a party does not comply with any procedure of RCW 11.96A.260 through 11.96A.310, the other party or parties may petition the superior court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with: The petition and any other actions taken after the issuance of the order to compel compliance with the order, unless the court at the hearing on the petition determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition. [1999 c 42 § 507.]

11.96A.900 Short title. This chapter may be known and cited as the trust and estate dispute resolution act or "TEDRA." [1999 c 42 § 101.]

11.96A.901 Captions not law—1999 c 42. Part headings and captions used in chapter 42, Laws of 1999 are not any part of the law. [1999 c 42 § 701.]

11.96A.902 Effective date—1999 c 42. This act takes effect January 1, 2000. [1999 c 42 § 703.]

Chapter 11.97 RCW EFFECT OF TRUST INSTRUMENT

Sections

11.97.010	Power of trustor—Trust provisions control.
11.97.020	Trust term interpretation and property disposition—Rules of construction.
11.97.900	Application of chapter.

11.97.010 Power of trustor—Trust provisions control. (1) The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.200 through 11.98.240, 11.95.100 through 11.95.150, and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment or the duty to provide information to beneficiaries as required in this section. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith

and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Within sixty days after the date of acceptance of the position of trustee of an irrevocable trust, or the date the trustee of a formerly revocable trust acquires knowledge that the trust has become irrevocable, whether by the death of the trustor or otherwise, the trustee shall give notice of: (a) The existence of the trust, (b) the identity of the trustor or trustors, (c) the trustee's name, address, and telephone number, and (d) the right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust, to all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust. If any such person is a minor and no guardian has been appointed for such person by any court, then such notice may be given to a parent of the person. If a person otherwise entitled to notice under this section is a charitable organization, and the charitable organization's only interest in the trust is a future interest that may be revoked, then such notice shall instead be given to the attorney general. A trustee who gives notice pursuant to this section satisfies the duty to inform the beneficiaries of the existence of the trust. The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, provided that all common law duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected.

(3) A trustee shall keep all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following is presumed to satisfy the trustee's duty to keep such persons reasonably informed for the relevant period of trust administration:

(a) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(b) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(c) The trustee's compensation for the period;

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(e) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(f) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(g) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(h) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.

(5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust is deemed to satisfy the trustee's obligations under this subsection. [2011 c 327 § 12; 2003 c 254 § 4; 1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.97.020 Trust term interpretation and property disposition—Rules of construction. The rules of construction that apply in this state to the interpretation of a will and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. [2011 c 327 § 13.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.97.900 Application of chapter. This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and 11.104A RCW and to RCW 11.106.020. [2003 c 254 § 5; 1985 c 30 § 39. Prior: 1984 c 149 § 65.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.98 RCW TRUSTS

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- 11.98.910 Severability—1959 c 124.
- 11.98.920 Short title.
- 11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Assignment for the benefit of creditors: Chapter 7.08 RCW.

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endowment and nonendowment care: Chapter 68.40 RCW.

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Loan agencies: Title 31 RCW.

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Pleadings, setoff against beneficiary or trustee of trust estate: RCW 4.32.120, 4.32.140.

Powers of appointment, powers in trust: Chapter 11.95 RCW.

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Prohibition: Chapter 7.16 RCW.

Property taxes

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Recording, county auditor's duties: Chapter 65.04 RCW.

Recording and publication: Title 65 RCW.

Registration of land titles

assurance fund not liable for breach by trustee: RCW 65.12.700.

encumbrances by trust deeds: RCW 65.12.420 through 65.12.450.

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trustee may register land: RCW 65.12.500.

trustees and receivers: RCW 65.12.600.

Resulting state bank, provisions when not exercising trust powers: RCW 30.49.100.

Retail sales tax, "buyer" includes trust, business trust, etc.: RCW 82.08.010.

Savings and loan associations: Title 33 RCW.

Savings banks

limitation on deposits: RCW 32.12.010.

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State depositaries: Chapter 43.85 RCW.

Statute of frauds: Chapter 19.36 RCW.

Trust business to be kept separate: RCW 30.04.240.

Trust companies

capital requirements: RCW 30.08.010.

limitation to act as executor or administrator: RCW 11.36.010.

Trust company

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defined: RCW 30.04.010.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

Trustees' accounting act: Chapter 11.106 RCW.

Trusts and monopolies: State Constitution Art. 12 § 22.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

Uniform

common trust fund act: Chapter 11.102 RCW.

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Use tax, "purchaser" includes trust, business trust, etc.: RCW 82.12.010.

Wills, generally: Chapter 11.12 RCW.

Witnesses, competency in actions involving fiduciaries: RCW 5.60.030.

11.98.005 Trust situs and governing law. (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee shall register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee shall mail a copy of the registration to each person who would be entitled to notice under RCW 11.97.010 and has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice shall have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all persons who were entitled to notice of the registration of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration shall be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the day of, 20. . . . ; unless you file a petition in the above-entitled court objecting to such registration and

requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of

In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on , the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on , and no objections to such Registration have been filed with this court, the trust known as , under trust agreement dated , between as Trustor and as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of, 20

(3) If the instrument establishing a trust does not designate Washington as the situs or designate Washington law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if the conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any beneficiary entitled to notice under RCW 11.97.010 resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an intervivos trust where the trustor is domiciled in Washington either when the trust becomes irrevocable or, in the case of a revocable trust, when judicial proceedings under chapter 11.96A RCW are commenced, the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased, situs has not previously been established by any court proceeding, and:

(A) The trustor's will was admitted to probate in Washington;

(B) The trustor's will was not admitted to probate in Washington, but any person entitled to notice under RCW 11.97.010 resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs shall be determined by a

court in a judicial proceeding conducted under RCW 11.96A.080 if:

- (i) A trustee has a place of business in or a trustee is a resident of Washington; or
 - (ii) More than an insignificant part of the trust administration occurs in Washington; or
 - (iii) One or more of the beneficiaries resides in Washington; or
 - (iv) An interest in real property located in Washington is an asset of the trust.
- (d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220. [2011 c 327 § 22.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.008 Trust creation—Methods. A trust may be created by:

- (1) Transfer of property to another person as trustee during the trustor's lifetime or by will or other disposition taking effect upon the trustor's death;
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee; or
- (3) Exercise of a power of appointment in favor of a trustee. [2011 c 327 § 15.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.009 Application of chapter. Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part. [2011 c 327 § 14; 1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW 30.99.010.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.011 Trust creation—Requirements. (1) A trust is created only if:

- (a) The trustor has capacity to create a trust;
- (b) The trustor indicates an intention to create the trust;
- (c) The trust has a definite beneficiary or is:
 - (i) A charitable trust;
 - (ii) A trust for the care of an animal, as provided in chapter 11.118 RCW; or
 - (iii) A trust for a noncharitable purpose, as provided in RCW 11.98.015;
- (d) The trustee has duties to perform; and
- (e) The same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid, except to the extent that the trustee may distribute trust property to himself or herself. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. [2011 c 327 § 16.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.012 Trust creation—Other jurisdictions. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation or in the case of a revocable trust, at the time the trust became irrevocable:

- (1) The trustor was domiciled, had a residence, or was a national;
- (2) The trustee was domiciled or had a place of business; or
- (3) Any trust property was located. [2011 c 327 § 17.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.013 Trust creation—Allowable purposes. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. [2011 c 327 § 18.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.014 Trust creation—Oral trusts. Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear, cogent, and convincing evidence. [2011 c 327 § 19.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.015 Noncharitable trusts without ascertainable beneficiaries. Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

- (1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;
- (2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and
- (3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then liv-

ing, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs. [2011 c 327 § 20.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.016 Exercise of powers by co-trustees. (1) Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power is liable to the beneficiaries or to others for the consequences of such exercise; nor is a dissenting trustee liable for the consequences of an act in which that trustee joins at the direction of the majority of the trustees, if that trustee expressed his or her dissent in writing to each of the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section, however, otherwise excuses a co-trustee from liability for failure to participate in the administration of the trust and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust. [1985 c 30 § 41. Prior: 1984 c 149 § 68; 1959 c 124 § 3. Formerly RCW 30.99.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.019 Relinquishment of powers by trustee. Any trustee may, by written instrument delivered to any then acting co-trustee and to the current adult income beneficiaries of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions

that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it. [1985 c 30 § 42. Prior: 1984 c 149 § 69.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.029 Resignation of trustee. Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW 11.98.041. [1989 c 10 § 3. Prior: 1985 c 30 § 43; prior: 1959 c 124 § 4. Formerly RCW 30.99.040.]

Intent—1989 c 10 § 3: "It is the intent of the legislature that RCW 11.98.029 be restored to full force and effect." [1989 c 10 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee shall serve as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055. [2011 c 327 § 21; 2005 c 97 § 13; 1999 c 42 § 618; 1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.041 Change of trustee—Discharge of outgoing trustee, when. Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee shall be discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under *RCW 11.98.039(3) regarding the appointment or change of a trustee of the trust. Where a petition is filed under *RCW 11.98.039(3) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require. [1985 c 30 § 141.]

***Reviser's note:** RCW 11.98.039 was amended by 2005 c 97 § 13, changing subsection (3) to subsection (4).

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.045 Criteria for transfer of trust assets or administration. (1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust;

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in RCW 11.98.005(1) with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9). [2011 c 327 § 23; 1985 c 30 § 45. Prior: 1984 c 149 § 74.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to those persons entitled to notice as provided for under RCW 11.96A.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW not less than sixty days before initiating the transfer. The notice must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the trust will be transferred together with evidence that the trustee has agreed to accept the trust in the manner provided by law of the new situs. The notice must also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the beneficiaries of the date, not less than sixty days after the giving of the notice, by which the beneficiary must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the date upon which the beneficiaries' right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust situs as provided in the notice. If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs

and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2011 c 327 § 24; 1999 c 42 § 619; 1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.055 Judicial transfer of situs of trusts. (1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of the situs of a trust in accordance with RCW 11.96A.080 through 11.96A.200.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of the situs of a trust on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

(3) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2011 c 327 § 25; 1999 c 42 § 620; 1985 c 30 § 47. Prior: 1984 c 149 § 76.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.060 Power of successor trustee. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. [1985 c 30 § 48. Prior: 1959 c 124 § 6. Formerly RCW 30.99.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.065 Change in form of corporate trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service. [1985 c 30 § 49. Prior: 1984 c 149 § 78.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.070 Power of trustee. A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given (2012 Ed.)

by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16)(a) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) Paying it to the beneficiary's guardian;

(ii) Paying it to the beneficiary's custodian under chapter 11.114 RCW, and, for that purpose, creating a custodianship;

(iii) If the trustee does not know of a guardian or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, with instructions to expend the funds on the beneficiary's behalf; or

(iv) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) If the trustee pays any amount to a third party under (a)(i) through (iii) of this subsection, the trustee has no further obligations regarding the amounts so paid;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee and reimburse the trustee, with interest as appropriate, for expenses that were properly incurred in the administration of the trust;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust;

(34)(a) Donate a qualified conservation easement, as defined by 26 U.S.C. Sec. 2031(c) of the federal internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under 26 U.S.C. Sec. 2031(c) of the federal internal revenue code or the deduction allowed under 26 U.S.C. Sec. 2055(f) of the federal internal revenue code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

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(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under 26 U.S.C. Sec. 2031(c)(8)(B) of the federal internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under 26 U.S.C. Sec. 2031(c)(8)(B);

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds. [2011 c 327 § 26; 2010 c 8 § 2091; 2002 c 66 § 1; 1997 c 252 § 75; 1989 c 40 § 7; 1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW 30.99.070.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.075 Certification of trust. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the trustor;

(c) The identity and address of the currently acting trustee;

(d) Relevant powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) The name of the trust or the titling of the trust property.

(2) A certification of trust may be signed or otherwise authenticated by any trustee or by an attorney for the trust.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction or any other reasonable information.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust. [2011 c 327 § 31.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.078 Trustee duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.090, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with RCW 11.98.108; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

(i) The trustee's spouse or registered domestic partner;

(ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;

(iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under RCW 11.106.020 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests. [2011 c 327 § 32.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.080 Consolidation of trusts. (1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and

the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96A.220.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96A.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96A.110 or from their representatives, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more

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trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created.

(5) For powers of fiduciaries to divide trusts, see RCW 11.108.025. [1999 c 42 § 621; 1991 c 6 § 2; 1985 c 30 § 51. Prior: 1984 c 149 § 81.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.085 Trustee—Breach of trust—Damages. (1)

A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received. [2011 c 327 § 33.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.090 Nonliability of third persons without knowledge of breach. In the absence of knowledge of a breach of trust, no party dealing with a trustee is required to see to the application of any moneys or other properties delivered to the trustee. [1985 c 30 § 52. Prior: 1984 c 149 § 83; 1959 c 124 § 8. Formerly RCW 30.99.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.100 Nonliability for action or inaction based on lack of knowledge of events. When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered. [1985 c 30 § 53. Prior: 1984 c 149 § 84; 1959 c 124 § 9. Formerly RCW 30.99.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.105 Nonliability of third persons without knowledge of breach. (1) A person other than a beneficiary

who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section. [2011 c 327 § 28.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.107 Trustee exculpation. (1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor. [2011 c 327 § 29.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.108 Nonliability of trustee—Beneficiary's consent, release, or ratification. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach. [2011 c 327 § 30.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.110 Contract and tort liability. As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

(3) In any such action against the trustee in the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section.

(5) The procedure for all actions provided in this section is as provided in RCW 11.96A.080 through 11.96A.200.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee. [1999 c 42 § 622; 1988 c 29 § 8; 1985 c 30 § 54. Prior: 1984 c 149 § 85; 1983 c 3 § 50; 1959 c 124 § 10. Formerly RCW 30.99.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.130 Rule against perpetuities. No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the rule against perpetuities, or any similar statute or common law, during the one hundred fifty years following the effective date of the instrument.

Thereafter, unless the trust assets have previously become distributable or vested, the provision or other disposition of property is deemed to have been rendered invalid

under the rule against perpetuities. [2001 c 60 § 1; 1985 c 30 § 55. Prior: 1984 c 149 § 87; 1965 c 145 § 11.98.010; prior: 1959 c 146 § 1. Formerly RCW 11.98.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.140 Distribution and vesting of assets. If, during the one hundred fifty years following the effective date of an instrument creating a trust, any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition. [2001 c 60 § 2; 1985 c 30 § 56. Prior: 1984 c 149 § 88; 1965 c 145 § 11.98.020; prior: 1959 c 146 § 2. Formerly RCW 11.98.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.145 Distribution upon termination. (1) Upon termination or partial termination of a trust, the trustee may send, by personal service, certified mail with return receipt requested, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, to the beneficiaries a proposed plan to distribute existing trust assets. The right of any beneficiary to object to the plan to distribute existing trust assets, including the right to object to nonpro rata distributions authorized under RCW 11.98.070(15), terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. [2011 c 327 § 27.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.150 Distribution of assets after one hundred fifty year period. If, at the end of the one hundred fifty years following the effective date of an instrument creating a trust, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment. [2001 c 60 § 3; 1985 c 30 § 57. Prior: 1984 c 149 § 89; 1965 c 145 § 11.98.030; prior: 1959 c 146 § 3. Formerly RCW 11.98.030.]

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Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust. For the purposes of RCW 11.98.130 through 11.98.150 the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death. [1989 c 14 § 2; 1985 c 30 § 58. Prior: 1984 c 149 § 90; 1965 c 145 § 11.98.040; prior: 1959 c 146 § 4. Formerly RCW 11.98.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.170 Designation of trustee as beneficiary of life insurance policy or retirement plan—Determination of proper recipient of proceeds—Definitions—Beneficiary designations executed before January 1, 1985, not invalidated. (1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96A RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient

of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96A RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.114 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter 11.114 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement. [1999 c 42 § 623; 1991 c 193 § 29; 1985 c 30 § 59. Prior: 1984 c 149 § 91.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.200 Beneficiary trustee—Limitations on power. Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to RCW 11.98.200 through 11.98.240 and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust, other than the trustor as a trustee, cannot be exercised by the trustee to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee, except to provide for the trustee's health, education, maintenance, or support as described under section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section;

(2) Discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties; or

(3) Discretionary distributions of either principal or income to satisfy a legal obligation of the trustee.

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this section, a person described in RCW 11.96A.080 who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW 11.98.039 as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW 11.96A.220. [1999 c 42 § 624; 1994 c 221 § 65; 1993 c 339 § 2.]

Additional notes found at www.leg.wa.gov

11.98.210 Beneficiary trustee—Disregard of provision conferring absolute or similar power—Power of removal. If a trustee is a beneficiary of the trust and the trust instrument confers the power to make distributions of principal or income for the trustee's health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a trust provision purporting to confer "absolute," "sole," "complete," "conclusive," or a similar discretion relating to the exercise of such trustee powers shall be disregarded in the exercise of the power, and the power may then only be exercised reasonably and in accordance with the ascertainable standard as set forth in RCW 11.98.200 and this section. A person who has the right to remove or to replace a trustee does not possess nor may the person be deemed to possess by virtue of having that right the powers of the trustee who is subject to removal or replacement. [1993 c 339 § 3.]

Additional notes found at www.leg.wa.gov

11.98.220 Beneficiary trustee—Inferences of law—Judicial review. RCW 11.98.200 through 11.98.240 do not raise any inference that the law of this state prior to July 25, 1993, was different than under RCW 11.98.200 through 11.98.240. Further, RCW 11.98.200 through 11.98.240 do not raise an inference that prior to July 25, 1993, a trustee's exercise or failure to exercise a power described in RCW 11.98.200 through 11.98.240 was not subject to review by a court of competent jurisdiction for abuse of discretion or breach of fiduciary duty under chapter 11.96A RCW or other applicable law. Following July 25, 1993, the power of judicial review continues to apply. [1999 c 42 § 625; 1993 c 339 § 4.]

Additional notes found at www.leg.wa.gov

11.98.230 Beneficiary trustee—Income under marital deduction—Spousal power of appointment. Notwithstanding any provision of RCW 11.98.200 through 11.98.240 seemingly to the contrary, RCW 11.98.200 through 11.98.240 do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections

requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.98.200 through 11.98.240 do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections. [1993 c 339 § 5.]

Additional notes found at www.leg.wa.gov

11.98.240 Beneficiary trustee—Applicability—Exceptions—Election of exception—Cause of action.

(1)(a) RCW 11.98.200 and 11.98.210 respectively apply to:

(i) A trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after July 25, 1993, unless the instrument's terms refer specifically to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary. However, except for RCW 11.98.200(3), the 1994 c 221 amendments to RCW 11.98.200 apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after January 1, 1995, unless the instrument's terms refer specifically to RCW 11.98.200 and provide expressly to the contrary.

(ii) A trust created under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed before July 25, 1993, unless:

(A) The trust is revoked or amended and the terms of the amendment refer specifically to RCW 11.98.200 and provide expressly to the contrary;

(B) All parties in interest, as defined in subsection (3) of this section elect affirmatively, in the manner prescribed in subsection (4) of this section, not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96A.080 obtains a judicial determination that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, RCW 11.98.200 and 11.98.210 respectively apply to a trust established under a will or codicil of a decedent dying on or after July 25, 1993, and to an inter vivos trust to which the trustor had on or after July 25, 1993, the power to terminate, revoke, amend, or modify, unless:

(i) The terms of the instrument specifically refer to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary; or

(ii) The decedent or the trustor was not competent, on July 25, 1993, to change the disposition of his or her property, or to terminate, revoke, amend, or modify the trust, and did not regain his or her competence to dispose, terminate, revoke, amend, or modify before the date of the decedent's death or before the trust could not otherwise be revoked, terminated, amended, or modified by the decedent or trustor.

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(2) RCW 11.98.200 neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed under RCW 11.98.200 that was exercised before July 25, 1993. RCW 11.98.210 neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed, limited, or qualified under RCW 11.98.210.

(3) For the purpose of subsection (1)(a)(ii) of this section, "parties in interest" means those persons identified as "parties" under *RCW 11.96A.030(4).

(4) The affirmative election required under subsection (1)(a)(ii)(B) of this section must be made in the following manner:

(a) If the trust is revoked or amended, through a revocation of or an amendment to the trust; or

(b) Through a nonjudicial dispute resolution agreement described in RCW 11.96A.220. [1999 c 42 § 626; 1997 c 252 § 76; 1994 c 221 § 66; 1993 c 339 § 6.]

*Reviser's note: RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5).

Additional notes found at www.leg.wa.gov

11.98.900 Application of RCW 11.98.130 through 11.98.160. The provisions of RCW 11.98.130 through 11.98.160 are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state. [1985 c 30 § 60. Prior: 1984 c 149 § 93; 1971 ex.s. c 229 § 1; 1965 c 145 § 11.98.050; prior: 1959 c 146 § 5. Formerly RCW 11.98.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.910 Severability—1959 c 124. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1985 c 30 § 61. Prior: 1959 c 124 § 11. Formerly RCW 30.99.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.920 Short title. This act shall be known as the "Washington Trust Act." [1985 c 30 § 62. Prior: 1959 c 124 § 12. Formerly RCW 30.99.910.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that

such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 39.]

Chapter 11.99 RCW CONSTRUCTION

Sections

11.99.010	Effective date of title.
11.99.013	Headings not part of law.
11.99.015	Repeal.
11.99.020	Savings clause—Rights not affected.
11.99.030	Severability—1965 c 145.

11.99.010 Effective date of title. This title shall take effect and be in force on and after the first day of July, 1967; except that sections 11.44.055, 11.44.065, 11.44.070 and 11.44.080 shall take effect on July 1, 1965, and the repeal of the following acts or parts of acts as listed in section 11.99.015 shall also take effect on July 1, 1965, to wit: In subsection (10), section 1444, Code of 1881; in subsection (47), section 95, chapter 156, Laws of 1917; in subsection (48), section 1, chapter 23, Laws of 1919; in subsection (64), section 1, chapter 112, Laws of 1929; in subsection (66), section 123, chapter 180, Laws of 1935; in subsection (71), section 8, chapter 202, Laws of 1939; and in subsection (111), section 83.16.040, chapter 15, Laws of 1961. Except as above provided the procedures herein prescribed shall govern all proceedings in probate brought after the effective date of the title and, also, all further procedure and proceedings in probate then pending, except to the extent that in the opinion of the court their application in particular proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply. [1965 c 145 § 11.99.010.]

11.99.013 Headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 145 § 11.99.013.]

11.99.015 Repeal. See 1965 c 145 § 11.99.015.

11.99.020 Savings clause—Rights not affected. No act done in any proceeding commenced before this title takes effect and no accrued right shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this title takes effect, such provisions shall remain in force and be deemed a part of this code with respect to such right. [1965 c 145 § 11.99.020.]

11.99.030 Severability—1965 c 145. If any provisions of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and, to

this end, provisions of this title are declared to be severable. [1965 c 145 § 11.99.030.]

Chapter 11.100 RCW INVESTMENT OF TRUST FUNDS

Sections

11.100.010	Provisions of chapter to control—Alteration by controlling instrument.
11.100.015	Guardians, guardianships and funds are subject to chapter.
11.100.020	Management of trust assets by fiduciary.
11.100.023	Authority of fiduciary to invest in certain enterprises.
11.100.025	Spousal or domestic partnership deduction interests.
11.100.030	Investment in savings accounts—Requirements.
11.100.035	Investments in securities of certain investment trusts.
11.100.037	Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception.
11.100.040	Court may permit deviation from terms of trust instrument.
11.100.045	Fiduciary—Duty to beneficiaries.
11.100.047	Fiduciary—Duty to diversify.
11.100.050	Scope of chapter.
11.100.060	Fiduciary may hold and retain trust property—Investments—Liability.
11.100.070	Meaning of terms in trust instrument.
11.100.090	Dealings with self or affiliate.
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11.100.140	Notice and procedure for nonroutine transactions.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.100.010 Provisions of chapter to control—Alteration by controlling instrument. Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. A fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with requirements of this chapter. The specific requirements of this chapter may be expanded, restricted, eliminated, or otherwise altered by provisions of the controlling instrument. [1995 c 307 § 1; 1985 c 30 § 63. Prior: 1955 c 33 § 30.24.010; prior: 1947 c 100 § 1; Rem. Supp. 1947 § 3255-10a. Formerly RCW 30.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.015 Guardians, guardianships and funds are subject to chapter. In addition to other fiduciaries, a guardian of any estate is a fiduciary within the meaning of this chapter; and in addition to other trusts, a guardianship of any estate is a trust within the meaning of this chapter; and in addition to other trust funds, guardianship funds are trust funds within the meaning of this chapter. [1985 c 30 § 64. Prior: 1955 c 33 § 30.24.015; prior: 1951 c 218 § 1. Formerly RCW 30.24.015.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.020 Management of trust assets by fiduciary. (1) A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular invest-

ment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.

(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:

- (a) The probable income as well as the probable safety of their capital;
- (b) Marketability of investments;
- (c) General economic conditions;
- (d) Length of the term of the investments;
- (e) Duration of the trust;
- (f) Liquidity needs;
- (g) Requirements of the beneficiary or beneficiaries;
- (h) Other assets of the beneficiary or beneficiaries, including earning capacity; and
- (i) Effect of investments in increasing or diminishing liability for taxes.

(3) Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account. [1995 c 307 § 2; 1985 c 30 § 65. Prior: 1984 c 149 § 97; 1955 c 33 § 30.24.020; prior: 1947 c 100 § 2; Rem. Supp. 1947 § 3255-10b. Formerly RCW 30.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Endowment care funds to be invested in accordance with RCW 11.100.020: RCW 68.44.030.

Additional notes found at www.leg.wa.gov

11.100.023 Authority of fiduciary to invest in certain enterprises. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments held by a fiduciary under the authority of this section valued at cost shall not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized. [1985 c 30 § 66. Prior: 1984 c 149 § 98.]

(2012 Ed.)

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Securities in default ineligible for investment: RCW 30.24.080.

Additional notes found at www.leg.wa.gov

11.100.025 Spousal or domestic partnership deduction interests. Notwithstanding RCW 11.98.070(21)(a), 11.100.060, or any other statutory provisions to the contrary, with respect to trusts which require by their own terms or by operation of law that all income be paid at least annually to the spouse or domestic partner of the trust's creator, which do not provide that on the termination of the income interest that the entire then remaining trust estate be paid to the estate of the spouse or domestic partner of the trust's creator, and for which a federal estate or gift tax marital deduction is claimed, any investment in or retention of unproductive property is subject to a power in the spouse or domestic partner of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise. [2008 c 6 § 929; 1985 c 30 § 67. Prior: 1984 c 149 § 99.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Securities in default ineligible for investment: RCW 30.24.080.

Additional notes found at www.leg.wa.gov

11.100.030 Investment in savings accounts—Requirements. A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that deposits are insured by an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited. [1985 c 30 § 68. Prior: 1984 c 149 § 101; 1967 c 133 § 3; 1955 c 33 § 30.24.030; prior: 1947 c 100 § 3; Rem. Supp. 1947 § 3255-10c. Formerly RCW 30.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.035 Investments in securities of certain investment trusts. (1) Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees, and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal

investment company act of 1940 as now or hereafter amended.

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the fiduciary may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(a) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

(3) If the fiduciary is a bank or trust company, then the fact that the fiduciary, or an affiliate of the fiduciary, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities of the open-end or closed-end management investment company or investment trust. The fiduciary shall furnish a copy of the prospectus relating to the securities to each person to whom a regular periodic accounting would ordinarily be rendered under the trust instrument or under RCW 11.106.020, upon the request of that person. The restrictions set forth under RCW 11.100.090 may not be construed as prohibiting the fiduciary powers granted under this subsection. [1995 c 307 § 3; 1994 c 221 § 68; 1989 c 97 § 1; 1985 c 30 § 69. Prior: 1955 c 33 § 30.24.035; prior: 1951 c 132 § 1. Formerly RCW 30.24.035.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.037 Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception. Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, only if the bank or trust company first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by an agency of the federal government. [1985 c 30 § 70. Prior: 1984 c 149 § 104; 1967 c 133 § 4. Formerly RCW 30.24.037.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.040 Court may permit deviation from terms of trust instrument. Nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property. [1985 c 30 § 71. Prior: 1955 c 33 § 30.24.040; prior: 1947 c 100 § 4; Rem. Supp. 1947 § 3255-10d. Formerly RCW 30.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.045 Fiduciary—Duty to beneficiaries. A fiduciary shall invest and manage the trust assets solely in the interests of the trust beneficiaries. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries. [1995 c 307 § 4.]

Additional notes found at www.leg.wa.gov

11.100.047 Fiduciary—Duty to diversify. Subject to the provisions of RCW 11.100.060 and any express provisions in the trust instrument to the contrary, a fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. [1995 c 307 § 5.]

Additional notes found at www.leg.wa.gov

11.100.050 Scope of chapter. The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985. [1985 c 30 § 72. Prior: 1984 c 149 § 107; 1955 c 33 § 30.24.050; prior: 1947 c 100 § 5; Rem. Supp. 1947 § 3255-10e. Formerly RCW 30.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.060 Fiduciary may hold and retain trust property—Investments—Liability. Subject to express provisions to the contrary in the trust instrument, any fiduciary may hold and retain any real or personal property received into or acquired by the trust from any source. Except as to trust property acquired for consideration, a fiduciary may hold and retain any such property without need for diversification as to kinds or amount and whether or not the property is income producing.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any invest-

ment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment. [1985 c 30 § 73. Prior: 1984 c 149 § 108.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.070 Meaning of terms in trust instrument.

The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW 11.100.020. [1985 c 30 § 74. Prior: 1984 c 149 § 110; 1955 c 33 § 30.24.070; prior: 1947 c 100 § 7; 1941 c 41 § 13; Rem. Supp. 1947 § 3255-13. Formerly RCW 30.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.090 Dealings with self or affiliate. Unless the instrument creating the trust expressly provides to the contrary and except as authorized in RCW 11.98.078, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12). [2011 c 327 § 34; 1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § 30.24.090; prior: 1947 c 100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW 30.24.090.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.120 Use of trust funds for life insurance. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to use trust funds to acquire life insurance upon the life of any beneficiary or upon the life of another in whose life such beneficiary has an insurable interest. [1985 c 30 § 76. Prior: 1984 c 149 § 112; 1973 1st ex.s. c 89 § 1. Formerly RCW 30.24.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Insurable interest, guardian, trustee or other fiduciary: RCW 48.18.030(3)(c).

Additional notes found at www.leg.wa.gov

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11.100.130 Person to whom power or authority to direct or control acts of fiduciary or investments of a trust is conferred deemed a fiduciary—Liability. Whenever power or authority to direct or control the acts of a fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority. [1995 c 307 § 6; 1985 c 30 § 77. Prior: 1973 1st ex.s. c 89 § 2. Formerly RCW 30.24.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.140 Notice and procedure for nonroutine transactions. (1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living,

to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW 11.110.020. The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW 11.98.009. [1985 c 30 § 78. Prior: 1984 c 149 § 114.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.102 RCW COMMON TRUST FUNDS

Sections

- 11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined.
- 11.102.020 Accounting.
- 11.102.030 Applicability of chapter.
- 11.102.040 Interpretation of chapter.
- 11.102.050 Short title.

11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined. Any bank or trust company qualified to act as fiduciary in this state, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this state, may establish common trust funds for the purpose of furnishing investments to itself and its affiliated or related bank or trust company as fiduciary, or to itself and its affiliated or related bank or trust company, and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: PROVIDED, That any bank or trust company qualified to act as fiduciary in the state of its charter, which is not a member of the federal reserve system, shall, in the operation of such

common trust fund, comply with the rules and regulations as made from time to time by the director of financial institutions in the state where chartered and in Washington the director is hereby authorized and empowered to make such rules and regulations as he or she may deem necessary and proper in the premises.

"Affiliated" as used in this section means two or more banks or trust companies:

(1) In which twenty-five percent or more of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or

(2) In which the election of a majority of the directors is controlled in any manner by a holding company. [1994 c 92 § 1; 1985 c 30 § 79. Prior: 1979 c 105 § 1; 1955 c 33 § 30.28.010; prior: 1943 c 55 § 1; Rem. Supp. 1943 § 3388. Formerly RCW 30.28.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.020 Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. [1985 c 30 § 80. Prior: 1955 c 33 § 30.28.020; prior: 1943 c 55 § 2; Rem. Supp. 1943 § 3388-1. Formerly RCW 30.28.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.030 Applicability of chapter. This chapter shall apply to fiduciary relationships in existence on June 11, 1943, or thereafter established. [1985 c 30 § 81. Prior: 1955 c 33 § 30.28.030; prior: 1943 c 55 § 7; Rem. Supp. 1943 § 3388-6. Formerly RCW 30.28.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.040 Interpretation of chapter. This chapter shall be so interpreted and construed to effectuate its general purpose to make uniform the laws of those states which enact it. [1985 c 30 § 82. Prior: 1955 c 33 § 30.28.040; prior: 1943 c 55 § 3; Rem. Supp. 1943 § 3388-2. Formerly RCW 30.28.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.050 Short title. This chapter may be cited as the uniform common trust fund act. [1985 c 30 § 83. Prior: 1955 c 33 § 30.28.050; prior: 1943 c 55 § 4; Rem. Supp. 1943 § 3388-3. Formerly RCW 30.28.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.103 RCW REVOCABLE TRUSTS

Sections

- 11.103.020 Trustor capacity.
- 11.103.030 Revocation or amendment.
- 11.103.040 Trustor's powers—Powers of withdrawal.

11.103.050 Limitation on action contesting validity of revocable trust—
Distribution of trust property.

11.103.020 Trustor capacity. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. [2011 c 327 § 35.]

Application—2011 c 327: "Except as otherwise provided in this act:

(1) This act applies to all trusts created before, on, or after January 1, 2012;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2012;

(3) Any rule of construction or presumption provided in this act applies to trust instruments executed before January 1, 2012, unless there is a clear indication of a contrary intent in the terms of the trust;

(4) An action taken before January 1, 2012, is not affected by this act; and

(5) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2012, that statute continues to apply to the right even if it has been repealed or superseded." [2011 c 327 § 40.]

Effective date—2011 c 327: "This act takes effect January 1, 2012." [2011 c 327 § 41.]

11.103.030 Revocation or amendment. (1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee shall promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power, as provided

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in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240. [2011 c 327 § 36.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.103.040 Trustor's powers—Powers of withdrawal. While a trust is revocable by the trustor, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the trustors having the right to revoke the trust. [2011 c 327 § 37.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.103.050 Limitation on action contesting validity of revocable trust—Distribution of trust property. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice with the information required in RCW 11.97.010, and notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received. [2011 c 327 § 38.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Chapter 11.104A RCW
WASHINGTON PRINCIPAL AND INCOME
ACT OF 2002

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DEFINITIONS; FIDUCIARY DUTIES AND
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11.104A.001 Short title. This chapter may be cited as the Washington principal and income act of 2002. [2002 c 345 § 101.]

11.104A.005 Definitions. In this chapter:

(1) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this chapter.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary.

(11) "Remainder beneficiary" means a person entitled to receive principal, including when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding. The "terms of a trust" shall include without limitation such modifications as may be made from time to time with respect to the trust under chapter 11.96A RCW or otherwise under Washington or applicable federal laws.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. [2002 c 345 § 102.]

11.104A.010 Fiduciary duties—General principles.
(a) In allocating receipts and disbursements to or between

principal and income, and with respect to any matter within the scope of this chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under RCW 11.104A.020 (a) or (e) or another discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries. [2002 c 345 § 103.]

11.104A.020 Fiduciary's power to adjust. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in RCW 11.104A.010(a), that the trustee is unable to comply with RCW 11.104A.010(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections in this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If subsection (c)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee or an additional trustee who is appointed by a court order, a binding agreement, or otherwise under chapter 11.96A RCW, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A personal representative serving with nonintervention powers under chapter 11.68 RCW may adjust between principal and income to the extent the personal representative considers necessary, if the personal representative invests and manages assets of the estate as a prudent investor and the personal representative determines, after applying the rules of RCW 11.104A.010(a), that the personal representative is unable to comply with RCW 11.104A.010(b). In deciding whether and to what extent to exercise the power conferred by this subsection, the personal representative shall consider all factors relevant to the estate and its beneficiaries, including factors comparable to those a trustee would consider under subsection (b) of this section if considering such an adjustment. A personal representative may not make an

adjustment under circumstances comparable to those that are described in subsection (c) of this section and that prohibit a trustee from making such an adjustment, although a copersonal representative, or an additional personal representative who is appointed by a court order, a binding agreement, or otherwise under chapter 11.96A RCW, to whom such limitations do not apply may make the adjustment unless the exercise of the power by the remaining personal representative or personal representatives is not permitted by the terms of a will.

(f) A fiduciary may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (8) of this section or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(g) Terms of a trust that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (a) of this section.

(h) Unless a beneficiary has requested the fiduciary in writing that the fiduciary consider an adjustment, nothing in this section imposes a duty on the fiduciary to make an adjustment and the fiduciary is not liable for not considering whether to make an adjustment under this section. [2002 c 345 § 104.]

11.104A.030 Judicial control of discretionary powers. (a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) of this section apply include:

(1) A determination under RCW 11.104A.020 (a) or (e) of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A determination of: (i) The factors that are relevant to the trust or estate and its beneficiaries; (ii) the extent to which they are relevant; and (iii) the weight, if any, to be given to the relevant factors, in deciding whether and to what extent to exercise the power conferred by RCW 11.104A.020 (a) or (e).

(3) A determination under RCW 11.104A.040(g).

(c) If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion, according to the following principles:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court may require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court may restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court does not restore under (1) and (2) of this subsection the beneficiaries, the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust, or both. The fiduciary has no liability under this section unless the beneficiary alleging the abuse of discretion establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment.

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by the act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(e) The fiduciary shall be reimbursed for any and all costs, including without limitation all attorneys' fees and costs of defense, and all liabilities that the fiduciary may incur in connection with any claim or action relating in any way to the fiduciary's exercise of its discretion under this chapter, except to the extent that the beneficiary establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment. All attorneys' fees and costs shall be advanced to the fiduciary as incurred and shall only be collected from the fiduciary after it has been determined that the fiduciary did not exercise its discretion in good faith and with honest judgment. [2002 c 345 § 105.]

11.104A.040 Power to convert to unitrust. (a)(1) In this section, "beneficiary" means a person who has an interest in the trust to be converted and who has the legal capacity to act in his, her, or its own right with respect to all actions that such person may take under this section.

(2) In this section, "unitrust" means both a trust converted into a unitrust under this section and a trust initially established as a unitrust. Unless inconsistent with the terms of the trust or will, subsections (f), (g), (h), (i), and (m) of this section apply to the unitrust initially so established.

(b) Unless expressly prohibited by the terms of the trust, a trustee may release the power to make adjustments under RCW 11.104A.020 and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee better to carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to each beneficiary who, on the date the notice is given:

(i) Is a distributee or permissible distributee of trust income or principal; or

(ii) Would be a distributee or permissible distributee of trust principal if the interests of the distributees described in (2)(i) of this subsection terminated and the trust then terminated immediately before the notice was given and if no powers of appointment were exercised.

(3) There is at least one beneficiary under (2)(i) of this subsection and at least one other person who is a beneficiary under (2)(ii) of this subsection.

(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within sixty days after the notice is given under (2) of this subsection.

(c) The parties, as defined by *RCW 11.96A.030(4), may agree to convert a trust to or from a unitrust by means of a binding agreement under chapter 11.96A RCW.

(d)(1) The trustee may petition the court under chapter 11.96A RCW to order a conversion to a unitrust if either of the following apply:

(i) A party, as defined by *RCW 11.96A.030(4), timely objects to the conversion to a unitrust; or

(ii) There are no beneficiaries under (2)(i) and (ii) of this subsection.

(2) A party, as defined by *RCW 11.96A.030(4), may request a trustee to convert to a unitrust. If the trustee does not convert, the party, as defined by *RCW 11.96A.030(4), may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(e) In deciding whether to exercise a power to convert to a unitrust under this section, a trustee may consider, among other things, the factors set forth in RCW 11.104A.020(b).

(f) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(i) From appreciation of principal;

(ii) From earnings and distributions from principal; or

(iii) From both.

(2) The trustee shall make regular distributions in accordance with the terms of the trust, or the terms of the will, as the case may be, construed in accordance with the provisions of this section.

(3) Unless expressly prohibited by the terms of the trust, the term "income" in the terms of a trust or a will means an annual distribution, the "unitrust distribution," equal to the

percentage, the "payout percentage," that is no less than three percent and no more than five percent and that the trustee may determine in the trustee's discretion from time to time, or, if the trustee makes no determination, that shall be four percent of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) The three preceding years; or

(ii) The period during which the trust has been in existence.

(g) The trustee may in the trustee's discretion from time to time determine all of the following:

(1) The effective date of a conversion to a unitrust.

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(3) The frequency of unitrust distributions during the year.

(4) The effect of other payments from or contributions to the trust on the trust's valuation.

(5) Whether to value the trust's assets annually or more frequently.

(6) What valuation dates to use.

(7) How frequently to value nonliquid assets and whether to estimate their value.

(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(9) Any other matters necessary for the proper functioning of the unitrust.

(h)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the terms of the trust, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(3) To the extent necessary to cause gains from the sale or exchange of unitrust assets to be treated as income under any federal, state, or local income tax (for example, section 643 of the Internal Revenue Code and its regulations, including Treasury Regulation § 1.643(b)-1, as amended or renumbered), the trustee has the discretionary power to allocate the gains to income, so long as the power is reasonably and impartially exercised.

(i) The trustee or, if the trustee declines to do so, a beneficiary may petition the court:

(1) To change the payout percentage.

(2) To provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

(3) To average the valuation of the trust's net assets over a period other than three years.

(4) To reconvert from a unitrust.

(j) Upon a reconversion, the power to adjust under RCW 11.104A.020 is revived.

(k) A conversion to a unitrust does not affect a provision in the terms of a trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(l) A trustee may not possess or exercise any power under this section in any of the following circumstances:

(1) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the terms of a trust and for which a charitable deduction from a federal gift or estate tax has been taken unless both income and principal are so set aside.

(2) The possession or exercise of the power would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as the owner if the trustee did not possess or exercise the power.

(3) The possession or exercise of the power would cause all or any part of the trust estate to be subject to any federal gift or estate tax with respect to the individual and the trust estate would not be subject to such taxation if the trustee did not possess or exercise the power.

(4) The possession or exercise of the power would result in the disallowance of a federal gift or estate tax marital deduction which would be allowed if the trustee did not have the power.

(5) The trustee is a beneficiary of the trust.

(m) If subsection (1)(2), (3), or (5) of this section applies to a trustee and there is more than one trustee or an additional trustee who is appointed by a court order, a binding agreement, or otherwise under chapter 11.96A RCW, a cotrustee to whom subsection (1)(2), (3), or (5) of this section does not apply may possess and exercise the power unless the possession or exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust. If subsection (1)(2), (3), or (5) of this section restricts all trustees from possessing or exercising a power under this section, the trustee may petition a court under chapter 11.96A RCW for the court to effect the intended conversion or action.

(n) A trustee may release any power conferred by this section if any of the following applies:

(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (1)(2), (3), or (4) of this section.

(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (1) of this section.

The release may be permanent or for a specified period, including a period measured by the life of an individual. [2006 c 360 § 1; 2002 c 345 § 106.]

***Reviser's note:** RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5).

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

ARTICLE 2
DECEDENT'S ESTATE OR
TERMINATING INCOME INTEREST

11.104A.050 Determination and distribution of net income. After a decedent dies, and subject to chapter 11.10 RCW, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 of this chapter which apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 of this chapter which apply to trustees, except to the extent that the following apply:

(i) The fiduciary shall include in net income all income from property used to discharge liabilities;

(ii) The fiduciary shall pay from income or principal, in the fiduciary's discretion, family allowances; fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(iii) The fiduciary shall pay from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of a trust, or applicable law from net income determined under subsection (2) of this section or from principal to the extent that net income is insufficient. Otherwise, no outright gift of a pecuniary amount whether under a will, or under a trust after an income interest ends shall receive interest or any other income.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in RCW 11.104A.060 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in RCW 11.104A.250 or 11.104A.260 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the

property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed. [2006 c 360 § 2; 2002 c 345 § 201.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.104A.060 Distribution to residuary and remainder beneficiaries. (a) Each beneficiary described in RCW 11.104A.050(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset. [2002 c 345 § 202.]

ARTICLE 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

11.104A.070 When right to income begins and ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest

begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income. [2002 c 345 § 301.]

11.104A.080 Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which RCW 11.104A.050(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which RCW 11.104A.100 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals. [2002 c 345 § 302.]

11.104A.090 Apportionment when income interest ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives

that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust principal immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements. [2002 c 345 § 303.]

ARTICLE 4
ALLOCATION OF RECEIPTS DURING
ADMINISTRATION OF TRUST
PART 1: RECEIPTS FROM ENTITIES

11.104A.100 Character of receipts. (a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest. "Entity" does not mean a trust or estate to which RCW 11.104A.110 applies, a business or activity to which RCW 11.104A.120 applies, or an asset-backed security to which RCW 11.104A.240 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

- (1) Property other than money;
- (2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (3) Money received in total or partial liquidation of the entity; and
- (4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

- (1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
- (2) If the total amount of money and property distributed in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial distribution.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property

comparable to those of a corporation's board of directors. [2002 c 345 § 401.]

11.104A.110 Distribution from trust or estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, RCW 11.104A.100 or 11.104A.240 applies to a receipt from the trust. [2002 c 345 § 402.]

11.104A.120 Business and other activities conducted by trustee. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets. The trustee shall maintain such records in accordance with principles of accounting that are generally accepted.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

- (1) Retail, manufacturing, service, and other traditional business activities;
- (2) Farming;
- (3) Raising and selling livestock and other animals;
- (4) Management of rental properties;
- (5) Extraction of minerals and other natural resources;
- (6) Timber operations; and
- (7) Activities to which RCW 11.104A.230 applies.

[2002 c 345 § 403.]

PART 2: RECEIPTS NOT NORMALLY APPORTIONED

11.104A.130 Principal receipts. A trustee shall allocate to principal:

- (1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in RCW 11.104A.260(a)(7) or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in Part 3 of this article. [2002 c 345 § 404.]

11.104A.140 Rental property. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount. [2002 c 345 § 405.]

11.104A.150 Obligation to pay money. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which RCW 11.104A.180, 11.104A.190, 11.104A.200, 11.104A.210, 11.104A.230, or 11.104A.240 applies. [2002 c 345 § 406.]

11.104A.160 Insurance policies and similar contracts. (a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to RCW 11.104A.120, loss of profits from a business.

(c) This section does not apply to a contract to which RCW 11.104A.180 applies. [2002 c 345 § 407.]

PART 3: RECEIPTS NORMALLY APPORTIONED

11.104A.170 Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by RCW 11.104A.180, 11.104A.190, 11.104A.200, 11.104A.210, or 11.104A.240 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in RCW 11.104A.020(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in RCW 11.104A.020(d) and may be released for the reasons and in the manner described in RCW 11.104A.020(f). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period. [2002 c 345 § 408.]

11.104A.180 Deferred compensation, annuities, and similar payments. (a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, a trustee shall allocate to income four percent of the total value of the interests of the trustee in the plan, annuity, or similar payment according to the most recent statement of value preceding the beginning of the accounting period and the balance to principal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under 26 U.S.C. Sec. 2056(b)(7) of the federal

internal revenue code of 1986, as amended as of July 26, 2009, has been made; or

(2) A trust that qualifies for the marital deduction under 26 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as amended as of July 26, 2009.

(e) Subsections (d), (f), and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under 26 U.S.C. Sec. 2056(b)(7)(C) of the federal internal revenue code of 1986, as amended as of July 26, 2009.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this section. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. Sec. 7520 of the federal internal revenue code of 1986, as amended as of July 26, 2009, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which RCW 11.104A.190 applies. [2009 c 365 § 1; 2002 c 345 § 409.]

11.104A.190 Liquidating asset. (a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to RCW 11.104A.180, resources subject to RCW 11.104A.200, timber subject to RCW 11.104A.210, an activity subject to RCW 11.104A.230, an asset subject to RCW 11.104A.240, or any asset for which the trustee establishes a reserve for depreciation under RCW 11.104A.270.

(b) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal. [2002 c 345 § 410.]

11.104A.200 Minerals, water, and other natural resources. (a) To the extent that a trustee accounts for

receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income; or

(4) If an amount is received from a working interest or any other interest not provided for in (1), (2), or (3) of this subsection, ninety percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2003, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2003, the trustee shall allocate receipts from the interest as provided in this chapter. [2002 c 345 § 411.]

11.104A.210 Timber. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to (1), (2), or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of

timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter. [2002 c 345 § 412.]

11.104A.220 Property not productive of income. (a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under RCW 11.104A.020 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by RCW 11.104A.020(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period. [2002 c 345 § 413.]

11.104A.230 Derivatives and options. (a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under RCW 11.104A.120 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal. [2002 c 345 § 414.]

11.104A.240 Asset-backed securities. (a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not

include an asset to which RCW 11.104A.100 or 11.104A.180 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal. [2002 c 345 § 415.]

ARTICLE 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

11.104A.250 Disbursements from income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which RCW 11.104A.050(2) (ii) or (iii) applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset. [2002 c 345 § 501.]

11.104A.260 Disbursements from principal. (a) A trustee shall make the following disbursements from principal:

(1) The remaining one-half of the disbursements described in RCW 11.104A.250 (1) and (2);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in RCW 11.104A.250(4) of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination,

monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

(c) For disbursements not covered in this section or RCW 11.104A.250, see RCW 11.104A.110(a)(4). [2002 c 345 § 502.]

11.104A.270 Transfers from income to principal for depreciation. (a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(2) Under this section if the trustee is accounting under RCW 11.104A.120 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund. [2002 c 345 § 503.]

11.104A.280 Transfers from income to reimburse principal. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in RCW 11.104A.260(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section. [2002 c 345 § 504.]

11.104A.290 Income taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be charged to income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be charged to principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be charged:

(a) To income to the extent that receipts from the entity are allocated only to income;

(b) To principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately to income and principal to the extent that receipts from the entity are allocated to both income and principal;

(d) Otherwise to principal.

(4) Before applying subsections (1) through (3) of this section, the trustee must adjust income or principal receipts by the distributions to a beneficiary for which the trust receives an income tax deduction. [2011 c 33 § 1; 2002 c 345 § 505.]

11.104A.300 Adjustments between principal and income because of taxes. (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income. [2002 c 345 § 506.]

ARTICLE 6
MISCELLANEOUS PROVISIONS

11.104A.900 Uniformity of application and construction. In applying and construing chapter 345, Laws of 2002, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact similar laws. [2002 c 345 § 602.]

11.104A.901 Application of chapter 11.96A RCW. Nothing in chapter 345, Laws of 2002 is intended to restrict the application of chapter 11.96A RCW to issues, questions, or disputes that arise under or that relate to chapter 345, Laws of 2002. Any and all such issues, questions, or disputes shall be resolved judicially or nonjudicially under chapter 11.96A RCW. [2002 c 345 § 603.]

11.104A.902 Severability—2002 c 345. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 345 § 604.]

11.104A.903 Captions, article and part headings not law—2002 c 345. Captions, article headings, and part headings used in *this chapter are not any part of the law. [2002 c 345 § 605.]

***Reviser's note:** "This chapter" is an inaccurate reference, change to "chapter 345, Laws of 2002."

11.104A.904 Effective date—2002 c 345. This act takes effect January 1, 2003. [2002 c 345 § 606.]

11.104A.905 Application of act to existing trusts and estates. Except as specifically provided otherwise in the terms of a trust or a will, chapter 345, Laws of 2002 shall apply to any receipt or expense received or incurred on or after January 1, 2003, by any trust or decedent's estate, whether established before, on, or after January 1, 2003, and whether the asset involved was acquired by the fiduciary before, on, or after January 1, 2003. [2002 c 345 § 607.]

11.104A.906 Transitional matters. RCW 11.104A.180 applies to a trust described in RCW 11.104A.180(d) on and after the following dates:

- (a) If the trust is not funded as of July 26, 2009, the date of the decedent's death.
- (b) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.
- (c) If the trust is not described in subsection (a) or (b) of this section, January 1, 2009. [2009 c 365 § 2.]

11.104A.907 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships

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that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 40.]

Chapter 11.106 RCW
TRUSTEES' ACCOUNTING ACT

Sections

- 11.106.010 Scope of chapter—Exceptions.
- 11.106.020 Trustee's annual statement.
- 11.106.030 Intermediate and final accounts—Contents—Filing.
- 11.106.040 Petition for statement of account.
- 11.106.050 Account filed—Return day—Notice.
- 11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives.
- 11.106.070 Court to determine accuracy, validity—Decree.
- 11.106.080 Effect of decree.
- 11.106.090 Appeal from decree.
- 11.106.100 Waiver of accounting by beneficiary.
- 11.106.110 Modification under chapter 11.97 RCW—How constituted.

11.106.010 Scope of chapter—Exceptions. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives. [1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § 30.30.010; prior: 1951 c 226 § 10. Formerly RCW 30.30.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.020 Trustee's annual statement. The trustee or trustees appointed by any will, deed, or agreement executed shall mail or deliver at least annually to each adult income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides. [1985 c 30 § 96. Prior: 1984 c 149 § 129; 1955 c 33 § 30.30.020; prior: 1951 c 226 § 2. Formerly RCW 30.30.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

Additional notes found at www.leg.wa.gov

11.106.030 Intermediate and final accounts—Contents—Filing. In addition to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which

the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) An itemized statement of all principal funds received and disbursed during such period;
- (4) An itemized statement of all income received and disbursed during such period, unless waived;
- (5) The balance of such principal and income remaining at the close of such period and how invested;
- (6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) A description of any possible unborn or unascertained beneficiary and his or her interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner. [2010 c 8 § 2092; 1985 c 30 § 97. Prior: 1984 c 149 § 130; 1955 c 33 § 30.30.030; prior: 1951 c 226 § 3. Formerly RCW 30.30.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.040 Petition for statement of account. At any time after the later of one year from the inception of the trust or one year after the day on which a report was last filed, any settlor or beneficiary of a trust may file a petition under RCW 11.96A.080 with the superior court in the county where the trustee or one of the trustees resides asking the court to direct the trustee or trustees to file in the court an account. At the hearing on such petition the court may order the trustee to file an account for good cause shown. [1999 c 42 § 627; 1985 c 30 § 98. Prior: 1984 c 149 § 131; 1955 c 33 § 30.30.040; prior: 1951 c 226 § 4. Formerly RCW 30.30.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.050 Account filed—Return day—Notice. When any account has been filed pursuant to RCW 11.106.030 or 11.106.040, the clerk of the court where filed shall fix a return day therefor as provided in RCW 11.96A.100(4) and issue a notice. The notice shall state the time and place for the return date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under RCW 11.96A.110. [1999 c 42 § 628; 1985 c 30 § 99. Prior: 1984 c 149 § 132; 1955 c 33 § 30.30.050; prior: 1951 c 226 § 5. Formerly RCW 30.30.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives. Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall appoint guardians ad litem as provided in RCW 11.96A.160 and the court may allow representatives to be appointed under RCW 11.96A.120 or 11.96A.250 to represent the persons listed in those sections. [1999 c 42 § 629; 1985 c 30 § 100. Prior: 1984 c 149 § 133; 1977 ex.s. c 80 § 31; 1955 c 33 § 30.30.060; prior: 1951 c 226 § 6. Formerly RCW 30.30.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

11.106.070 Court to determine accuracy, validity—Decree. Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust. [1985 c 30 § 101. Prior: 1984 c 149 § 134; 1955 c 33 § 30.30.070; prior: 1951 c 226 § 7. Formerly RCW 30.30.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.080 Effect of decree. The decree rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW 11.106.090. [1985 c 30 § 102. Prior: 1984 c 149 § 135; 1955 c 33 § 30.30.080; prior: 1951 c 226 § 8. Formerly RCW 30.30.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.090 Appeal from decree. The decree rendered under RCW 11.106.070 shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington [1985 c 30 § 103. Prior: 1984 c 149 § 136; 1971 c 81 § 80; 1955 c 33 § 30.30.090; prior: 1951 c 226 § 9. Formerly RCW 30.30.090.]

Rules of court: *Method of appellate review superseded by RAP 2.2(a)(3), 18.22.*

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.100 Waiver of accounting by beneficiary.

Any adult beneficiary entitled to an accounting under either RCW 11.106.020 or 11.106.030 may waive such an accounting by a separate instrument delivered to the trustee. [1985 c 30 § 104. Prior: 1984 c 149 § 137; 1955 c 33 § 30.30.100; prior: 1951 c 226 § 11. Formerly RCW 30.30.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.110 Modification under chapter 11.97 RCW—How constituted. This chapter is declared to be of similar import to the uniform trustees' accounting act. Any modification under chapter 11.97 RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement heretofore or hereafter executed shall be given effect whether the waiver refers to the uniform trustees' accounting act by name or other reference or to any other act of like or similar import. [1985 c 30 § 105. Prior: 1984 c 149 § 138; 1955 c 33 § 30.30.110; prior: 1951 c 226 § 12. Formerly RCW 30.30.110.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.108 RCW**MISCELLANEOUS PROVISIONS FOR DISTRIBUTIONS MADE BY A GOVERNING INSTRUMENT**

(Formerly: Trust gift distribution)

Sections

11.108.010	Definitions.
11.108.020	Marital deduction gift—Compliance with Internal Revenue Code—Fiduciary powers.
11.108.025	Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations.
11.108.030	Pecuniary bequests—Valuation of assets if distribution other than money.
11.108.040	Construction of certain marital deduction formula bequests.
11.108.050	Marital deduction gift in trust.
11.108.060	Marital deduction gift—Survivorship requirement—Limits—Property to be held in trust.
11.108.070	Presumptions for the interpretation, construction, and administration of governing instrument.
11.108.080	Generation-skipping transfer tax—Federal law application.
11.108.090	Generation-skipping transfer tax—Dispute resolution of federal law application.
11.108.900	Application of chapter—Application of 2006 c 360.
11.108.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.108.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) As the context might require, the term "marital deduction" means either the federal or state estate tax deduction or the federal gift tax deduction allowed for transfers to spouses under the Internal Revenue Code or applicable state law.

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(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction as indicated by a preponderance of the evidence including the governing instrument and extrinsic evidence whether or not the governing instrument is found to be ambiguous.

(5) The term "governing instrument" includes, but is not limited to: Will and codicils; revocable trusts and amendments or addenda to revocable trusts; irrevocable trusts; beneficiary designations under life insurance policies, annuities, employee benefit plans, and individual retirement accounts; payable-on-death, trust, or joint with right of survivorship bank or brokerage accounts; transfer on death designations or transfer on death or pay on death securities; and documents exercising powers of appointment.

(6) The term "fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) The term "gift" refers to all gifts, legacies, devises, and bequests made in a governing instrument, whether outright or in trust, and whether made during the life of the transferor or as a result of the transferor's death.

(8) The term "transferor" means the testator, donor, grantor, or other person making a gift.

(9) The term "spouse" includes the transferor's surviving spouse in the case of a deceased transferor. [2006 c 360 § 3; 1997 c 252 § 81; 1993 c 73 § 2; 1990 c 224 § 2; 1988 c 64 § 27; 1985 c 30 § 106. Prior: 1984 c 149 § 140.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.020 Marital deduction gift—Compliance with Internal Revenue Code—Fiduciary powers. (1) If a governing instrument contains a marital deduction gift, the governing instrument shall be construed to comply with the marital deduction provisions of the Internal Revenue Code in every respect.

(2) If a governing instrument contains a marital deduction gift, any fiduciary operating under the governing instrument has all the powers, duties, and discretionary authority necessary to comply with the marital deduction provisions of the Internal Revenue Code. The fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the elections under either section 2056(b)(7) or 2523(f) of the Internal Revenue Code that is referred to in RCW 11.108.025. [1997 c 252 § 82; 1993 c 73 § 3; 1988 c 64 § 28; 1985 c 30 § 107. Prior: 1984 c 149 § 141.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.025 Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations. Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduc-

tion as qualified terminable interest property under section 2056(b)(7) or 2523(f) of the Internal Revenue Code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the Internal Revenue Code. Further, the fiduciary shall have the power to make generation-skipping transfer tax allocations under section 2632 of the Internal Revenue Code.

(2) The fiduciary making an election under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code or making an allocation under section 2632 of the Internal Revenue Code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) The fiduciary of a trust, if an election is made under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code, if an allocation is made under section 2632 of the Internal Revenue Code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, if:

(a) The terms of the separate trusts which result are substantially identical to the terms of the trust before division;

(b) In the case of a trust otherwise qualifying for the marital deduction under the Internal Revenue Code, the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction; and

(c) The allocation of assets shall be based upon the fair market value of the assets at the time of the division.

(4) For state and federal estate tax purposes, a fiduciary may make inconsistent elections under section 2056(b)(7) or 2056A of the Internal Revenue Code and under similar provisions of applicable state law. [2006 c 360 § 5; 1997 c 252 § 83; 1993 c 73 § 4; 1991 c 6 § 1; 1990 c 179 § 2; 1988 c 64 § 29.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Additional notes found at www.leg.wa.gov

11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money. (1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions. [1985 c 30 § 108. Prior: 1984 c 149 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.108.040 Construction of certain marital deduction formula bequests. (1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of that testator's estate or a trust estate expressed in terms of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall, unless subsection (2) or (3) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under RCW 11.96A.220; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator, the expression shall not be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the

federal estate tax marital deduction as qualified terminable interest property, but only to the extent that such construction does not cause the amount or fractional share left to or for the benefit of the surviving spouse to be reduced below the amount that would pass under subsection (2) or (3) of this section, whichever is applicable.

(5) This section is effective with respect to testators dying after December 31, 1982. [1999 c 42 § 630; 1985 c 30 § 109. Prior: 1984 c 149 § 143.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.050 Marital deduction gift in trust. If a governing instrument contains a marital deduction gift in trust, then in addition to the other provisions of this chapter, each of the following applies to the trust to the extent necessary to qualify the gift for the marital deduction:

(1) If the transferor's spouse is a citizen of the United States at the time of the transfer:

(a) The transferor's spouse is entitled to all of the income from the trust, payable annually or at more frequent intervals, during the spouse's life;

(b) During the life of the transferor's spouse, a person may not appoint or distribute any part of the trust property to a person other than the transferor's spouse;

(c) The transferor's spouse may compel the trustee of the trust to make any unproductive property of the trust productive, or to convert the unproductive property into productive property, within a reasonable time; and

(d) The transferor's spouse may, alone and in all events, dispose of all of the trust property, including accrued or undistributed income, remaining after the spouse's death under a testamentary general power of appointment, as defined in section 2041 of the Internal Revenue Code. However, this subsection (1)(d) does not apply to: (i) A marital deduction gift in trust which is described in subsection (2) of this section; (ii) that portion of a marital deduction gift in trust that has qualified for the marital deduction as a result of an election under section 2056(b)(7) or 2523(f) of the Internal Revenue Code; and (iii) that portion of marital deduction gift in trust that would have qualified for the marital deduction but for the fiduciary's decision not to make the election under section 2056(b)(7) or 2523(f) of the Internal Revenue Code;

(2) If the transferor's spouse is not a citizen of the United States at the time of the transfer, then to the extent necessary to qualify the gift for the marital deduction, subsection (1)(a), (b), and (c) of this section and each of the following applies to the trust:

(a) At least one trustee of the trust must be an individual citizen of the United States or a domestic corporation, and a distribution, other than a distribution of income, may not be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed under section 2056A of the Internal Revenue Code on the distribution;

(b) The trust must meet such requirements as the secretary of the treasury of the United States by regulations prescribes to ensure collection of estate tax, under section 2056A(b) of the Internal Revenue Code; and

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(c) Subsection (2)(a) and (b) of this section no longer apply to the trust if the transferor's spouse becomes a citizen of the United States and: (i) The transferor's spouse was a resident of the United States at all times after the transferor's death and before becoming a citizen; (ii) tax has not been imposed on the trust under section 2056A(b)(1)(A) of the Internal Revenue Code before the transferor's spouse becomes a citizen; or (iii) the transferor's spouse makes an election under section 2056A(b)(12)(C) of the Internal Revenue Code regarding tax imposed on distributions from the trust before becoming a citizen; and

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

(a) A trust: (i) That provides for a life estate or term of years for the exclusive benefit of the transferor's spouse, with the remainder payable to the such spouse's estate; or (ii) created exclusively for the benefit of the estate of the transferor's spouse; and

(b) An interest of the transferor's spouse in a charitable remainder annuity trust or charitable remainder unitrust described in section 664 of the Internal Revenue Code, if the transferor's spouse is the only noncharitable beneficiary. [1997 c 252 § 84; 1993 c 73 § 5; 1990 c 179 § 3; 1985 c 30 § 110. Prior: 1984 c 149 § 144.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.060 Marital deduction gift—Survivorship requirement—Limits—Property to be held in trust. For an estate that exceeds the amount exempt from state or federal tax by virtue of the credit under section 2010 of the Internal Revenue Code, if taking into account applicable adjusted taxable gifts as defined in section 2001(b) of the Internal Revenue Code, any marital deduction gift that is conditioned upon the transferor's spouse surviving the transferor for a period of more than six months, is governed by the following:

(1) A survivorship requirement expressed in the governing instrument in excess of six months or which may exceed six months, other than survival by a spouse of a common disaster resulting in the death of the transferor, does not apply to property passing under the marital deduction gift, and for the gift, the survivorship requirement may not exceed the period ending six months following the transferor's date of death, as established under section 2056(b)(3) of the Internal Revenue Code.

(2) If the property that is the subject of the marital deduction gift is passing or is to be held in trust, as opposed to passing outright, it must be held in a trust meeting the requirements of section 2056(b)(7) of the Internal Revenue Code the corpus of which must: (a) Pass as though the spouse failed to survive the transferor if the spouse, in fact, fails to survive the term specified in the governing instrument; and (b) pass to the spouse under the terms of the governing instrument if the spouse, in fact, survives the term specified in the governing instrument. [2006 c 360 § 6; 1999 c 44 § 1; 1997 c 252 § 86; 1989 c 35 § 1; 1985 c 30 § 111. Prior: 1984 c 149 § 145.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.070 Presumptions for the interpretation, construction, and administration of governing instrument.

(1) The legislature finds that the citizens and residents of the state, and nonresidents of the state having property located in Washington, desire to take full advantage of the exemptions, exclusions, deductions, and credits allowable under the federal estate, gift, income, and generation-skipping transfer taxes, and the Washington counterparts to those taxes, if any, unless the facts and circumstances indicate otherwise, or the transferor has expressed a contrary intent in the governing instrument.

(2) In interpreting, construing, or administering a governing instrument, absent a clear expression of intent by the transferor to the contrary, the following presumptions apply and may only be rebutted by clear, cogent, and convincing evidence to the contrary, but these presumptions of intent do not require the making of any particular voluntary tax election:

(a) The transferor intended to take advantage of the maximum benefit of tax deductions, exemptions, exclusions, or credits;

(b) The transferor intended any gift to a spouse made outright and free of trust is to qualify for the gift or estate tax marital deduction and to be a marital deduction gift; and

(c) If the governing instrument refers to a trust as a marital trust, QTIP trust, or spousal trust, or refers to qualified terminable interest property, QTIP, or QTIP property, sections 2044, 2056, and 2523 of the Internal Revenue Code or similar provisions of applicable state law, the transferor intended the property passing to such a trust and the trust to qualify for the applicable gift or estate tax marital [marital] deduction, and for the gift to qualify for a marital deduction gift.

(3) References in this chapter to provisions of the Internal Revenue Code include references to similar provisions, if any, of applicable state law. [2006 c 360 § 4.]

Clarification of laws—Enforceability of act—2006 c 360: "This act clarifies and declares the existing laws of this state. This act is enforceable as to all persons and all trusts regardless of when the trust was created." [2006 c 360 § 17.]

Severability—2006 c 360: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 360 § 18.]

11.108.080 Generation-skipping transfer tax—Federal law application.

(1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, is deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or trust contains a formula that:

(a) Refers to any of the following: "Unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "marital deduction," "maximum marital deduction," or "unlimited marital deduction;"

(b) Measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes; or

(c) Is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in (a) or (b) of this subsection.

(2) This section is presumed to not apply with respect to a will or trust that (a) is executed or amended after December 31, 2009, or (b) clearly manifests an intent that a contrary rule applies in cases where the decedent dies on a date on which there is no then-applicable federal estate or federal generation-skipping transfer tax and such tax has been permanently repealed and not merely temporarily repealed for calendar year 2010.

(3) The reference to January 1, 2011, in this section refers, if the federal estate and generation-skipping transfer tax becomes effective before that date, to the first date on which such tax becomes legally effective.

(4) Construction of a will or trust under this section may be confirmed pursuant to the procedures set forth in the trust and estate dispute resolution act in chapter 11.96A RCW. [2010 c 11 § 2.]

Finding—2010 c 11: "The legislature finds in order to carry out the intent of decedents in the construction of wills and trusts, and in order to promote judicial economy in the administration of trusts and estates, that it is necessary to construe certain formula clauses to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying on December 31, 2009." [2010 c 11 § 1.]

Retroactive application—2010 c 11: "The provisions of this act are effective retroactive to December 31, 2009." [2010 c 11 § 4.]

Application—Construction—2010 c 11: "This act is remedial in nature and must be applied and construed liberally in order to carry out its intent." [2010 c 11 § 5.]

Effective date—2010 c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 10, 2010]." [2010 c 11 § 7.]

11.108.090 Generation-skipping transfer tax—Dispute resolution of federal law application.

The personal representative, trustee, or any affected beneficiary under a will or trust may bring a proceeding under the trust and estate dispute resolution act in chapter 11.96A RCW, to determine whether the decedent intended that the references, presumptions, or rules of construction under RCW 11.108.080 be construed with respect to the federal law as it existed after December 31, 2009, including but not limited to the amendments made to federal law by the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, federal House Resolution No. 4853, P.L. 111-312. In making such determinations, extrinsic evidence may be considered, whether or not the governing instrument is found to be ambiguous, including but not limited to, information provided by the decedent to the decedent's attorney or personal representative. Such a proceeding must be commenced not later than two years following the death of the testator or grantor, and not thereafter. [2011 c 113 § 2; 2010 c 11 § 3.]

Finding—2011 c 113: "On December 17, 2010, the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, House Resolution No. 4853, P.L. 111-312, was enacted into law. Federal House Resolution No. 4853 amended the federal gift, estate, and generation-skipping transfer taxes by retroactively reinstating those taxes to January 1, 2010, with an increased applicable exemption amount per taxpayer of five million dollars. House Resolution No. 4853 also extended the time for making certain qualified disclaimers. In light of these changes in federal law, the legislature finds in order: To carry out the intent of decedents and grantors in the construction of wills, trusts, and other dispositive instruments; to continue the uniformity of the Washington disclaimer law with federal law; and

to promote judicial economy in the administration of trusts and estates, it is necessary to amend certain time limitations and to clarify procedures to construe certain formula clauses that refer to federal estate, gift, and generation-skipping transfer tax rules applicable to estates of decedents dying after December 31, 2009, and prior to December 18, 2010." [2011 c 113 § 1.]

Retroactive application—2011 c 113: "The provisions of this act are effective retroactive to December 31, 2009, and apply to estates of decedents dying after December 31, 2009, and prior to December 18, 2010. Returns and payments for estate tax imposed under chapter 83.100 RCW will continue to be due and owing as provided in chapter 83.100 RCW and nothing in this act is intended to affect the application of that chapter to any taxpayer." [2011 c 113 § 4.]

Application—2011 c 113: "This act is remedial in nature and must be applied and construed liberally in order to carry out its intent." [2011 c 113 § 5.]

Effective date—2011 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2011]." [2011 c 113 § 7.]

Finding—Retroactive application—Application—Construction—Effective date—2010 c 11: See notes following RCW 11.108.080.

11.108.900 Application of chapter—Application of 2006 c 360. (1) This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96A RCW apply to this chapter.

(2) Sections 3 through 6, chapter 360, Laws of 2006 are remedial in nature and shall be liberally applied in order to achieve the purposes of chapter 360, Laws of 2006. [2006 c 360 § 7; 1999 c 42 § 631; 1985 c 30 § 112. Prior: 1984 c 149 § 146.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 41.]

(2012 Ed.)

Chapter 11.110 RCW CHARITABLE TRUSTS

Sections

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- 11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations.
- 11.110.900 Severability—1967 ex.s. c 53.

Fees—Charitable trusts—Charitable solicitations: RCW 43.07.125.

11.110.010 Purpose of chapter. The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general and the secretary of state with relation thereto. [1993 c 471 § 25; 1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW 19.10.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.020 Definitions. When used in this chapter, unless the context otherwise requires:

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: PROVIDED, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax

exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: PROVIDED, That if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW 19.10.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.040 Information, documents, and reports are public records—Inspection—Publication. All information, documents, and reports filed with the secretary of state under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: PROVIDED, That the secretary of state shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The secretary of state may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with the secretary of state or any other matters relevant to the administration and enforcement of this chapter. [1993 c 471 § 26; 1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW 19.10.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.051 Registration of trustee—Requirements—Exception—Application of chapter to nonregistered trustees. (1) Except as provided in subsection (2) of this section, a trustee, as defined by RCW 11.110.020, must register with the secretary of state if, as to a particular charitable trust:

(a) The trustee holds assets in trust, invested for income-producing purposes, exceeding a value established by the secretary of state by rule;

(b) Under the terms of the trust all or part of the principal or income of the trust can or must currently be expended for charitable purposes; and

(c) The trust instrument does not require the distribution of the entire trust corpus within a period of one year or less.

(2) A trustee of a trust, in which the only charitable interest is in the nature of a remainder, is not required to register during any life estate or other term that precedes the charitable interest. This exclusion from registration applies to trusts which have more than one noncharitable life income beneficiary, even if the death of one such beneficiary obligates the trustee to distribute a remainder interest to charity.

(3) A trustee of a charitable trust that is not required to register pursuant to this section is subject to all requirements of this chapter other than those governing registration and reporting to the secretary of state. [1997 c 124 § 1.]

11.110.060 Instrument establishing trust, inventory of assets, registration status, successor trustee information, and amendments to be filed. (1) Every trustee required to file under RCW 11.110.051 shall file with the secretary of state within four months after receiving possession or control of the trust corpus, or after the trust becomes a trust described by RCW 11.110.051(1):

(a) A copy of the instrument establishing his or her title, powers, or duties;

(b) An inventory of the assets of such charitable trust; and

(c) A registration form setting forth the trustee's name, mailing address, physical address if different, and additional identifying information required by the secretary by rule.

(2) A successor trustee to a previously registered trust shall file a registration form and inventory of assets within four months after receiving possession or control of the trust corpus.

(3) A trustee required to register shall file with the secretary of state copies of all amendments to the trust instrument within four months of the making of the amendment. [1997 c 124 § 2; 1993 c 471 § 28; 1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW 19.10.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.070 Tax or information return or report—Filing—Rules—Forms. Every trustee required to register under RCW 11.110.051 shall file with the secretary of state a copy of each publicly available United States tax or information return or report of the trust at the time that the trustee files with the internal revenue service. The secretary may provide by rule for the exemption from reporting under this section by some or all trusts not required to file a federal tax or information return, and for a substitute form containing similar information to be used by any trusts not so exempted. [1997 c 124 § 3; 1993 c 471 § 29; 1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW 19.10.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.075 Trust not exclusively for charitable purposes—Instrument and information not public—Access. A trust is not exclusively for charitable purposes, within the meaning of RCW 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the secretary of state and no information as to such noncharitable purpose shall be made public. The attorney general shall have free access to such information. [1997 c 124 § 4; 1993 c 471

§ 30; 1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW 19.10.075.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.090 Uniformity of chapter with laws of other states. It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW 19.10.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.100 Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required. The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He or she may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [2010 c 8 § 2093; 1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW 19.10.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.110 Order to appear—Effect—Enforcement—Appellate review. When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals. [2010 c 8 § 2094; 1988 c 202 § 20; 1985 c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW 19.10.110.]

Rules of court: *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

(2012 Ed.)

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.120 Proceedings to secure compliance and proper trust administration—Attorney general to be notified of judicial proceedings involving charitable trust—Powers and duties additional. The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He or she shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he or she is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96A.110, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his or her existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [2010 c 8 § 2095; 1999 c 42 § 632; 1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW 19.10.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.125 Violations—Refusal to file reports, perform duties, etc. The willful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule adopted by the secretary of state under this chapter, shall constitute a breach of trust and a violation of this chapter. [1993 c 471 § 32; 1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW 19.10.125.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.130 Violations—Civil action may be prosecuted. A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney. [1993 c 471 § 33; 1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW 19.10.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.140 Penalty. Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1985 c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW 19.10.140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.200 Tax Reform Act of 1969, state implementation—Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code. RCW 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code. With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971. [1993 c 73 § 6; 1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW 19.10.200.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

(2) Retaining any "excess business holdings," as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

(4) Making any "taxable expenditures," as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code:

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code. [1993 c 73 § 7; 1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW 19.10.210.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code.

[1993 c 73 § 8; 1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW 19.10.220.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired. Nothing in RCW 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW 19.10.230.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.250 Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust. Nothing in RCW 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 11.110.210 and 11.110.220 shall have no application to such trust. [1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW 19.10.250.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.260 Tax Reform Act of 1969, state implementation—Severability—RCW 11.110.200 through 11.110.260. If any provision of RCW 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 11.110.200 through 11.110.260 are declared to be severable. [1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW 19.10.260.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations. See RCW 24.40.010 through 24.40.070.

11.110.900 Severability—1967 ex.s. c 53. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 136. Prior: 1967 ex.s. c 53 § 15. Formerly RCW 19.10.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.114 RCW
UNIFORM TRANSFERS TO MINORS ACT

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11.114.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult" means an individual other than the minor who has attained the age of twenty-one years and is older than the minor.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.

(5) "Court" means a superior court of the state of Washington.

(6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under RCW 11.114.090 or a successor or substitute custodian designated under RCW 11.114.180.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or guardian.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, domestic partner, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

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(11) "Minor" means an individual who has not attained the age of twenty-five years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under RCW 11.114.090.

(15) "Transferor" means a person who makes a transfer under this chapter.

(16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers. [2008 c 6 § 934; 2006 c 204 § 1; 1991 c 193 § 1.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Effective date—2006 c 204: See note following RCW 11.114.090.

11.114.020 Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter under this chapter subject to court determination is governed by the procedures provided in RCW 11.96A.080 through 11.96A.200. However, no guardian ad litem is required for the minor, except under RCW 11.114.190(1), in the case of a petition by an unrepresented minor under the age of eighteen years. [2006 c 204 § 2; 1999 c 42 § 633; 1991 c 193 § 2.]

Effective date—2006 c 204: See note following RCW 11.114.090.

Additional notes found at www.leg.wa.gov

11.114.030 Nomination of custodian—Designation of custodian by representative or specified person. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named,

if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

As an alternative to naming a specific person as custodian, the nomination may provide that the custodian may be designated by the legal representative of, or other person specified by, the person having the right to designate the recipient of the property described in this subsection. The person having the right of designation of the custodian is authorized to designate himself or herself as custodian, if he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under RCW 11.114.090(1).

(3) Instead of designating one specific minor, the designation may specify multiple persons or a class or classes of persons, but when the custodial property is actually created under subsection (4) of this section, it must be constituted as a separate custodianship for each beneficiary, and each beneficiary's interest in it must be determined in accordance with the governing instrument and applicable law.

(4) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under RCW 11.114.090. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to RCW 11.114.090. [1998 c 292 § 301; 1991 c 193 § 3.]

Additional notes found at www.leg.wa.gov

11.114.040 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to RCW 11.114.090. [1991 c 193 § 4.]

11.114.050 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to RCW 11.114.090 to a custodian for the benefit of a minor as authorized in the governing will or trust. The personal representative or trustee may designate himself or herself as custodian provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) If the testator or grantor has nominated a custodian under RCW 11.114.030 to receive the custodial property, the transfer shall be made to that person.

(3) If the testator or grantor has not nominated a custodian under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under RCW 11.114.090(1). The personal representative or

trustee may designate himself or herself as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1). [1991 c 193 § 5.]

11.114.060 Other transfer by fiduciary. (1) A personal representative or trustee may make an irrevocable transfer to an adult or trust company for the benefit of a minor pursuant to RCW 11.114.090, in the absence of a will or under a will or trust that does not contain an authorization to do so, but only if:

(a) The personal representative or trustee, or the court if an order is requested under (c) of this subsection, considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust instrument, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds thirty thousand dollars in value.

The personal representative, the trustee, or a member of the minor's family may select the custodian, subject to court approval. The personal representative or trustee may serve as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A member of the minor's family may request that the court establish a custodianship if a custodianship has not already been established, regardless of the value of the transfer. [1991 c 193 § 6.]

11.114.070 Transfer by obligor. (1) Subject to subsections (2) and (3) of this section, a person not subject to RCW 11.114.050 or 11.114.060 who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to RCW 11.114.090.

(2) If a person having the right to do so under RCW 11.114.030 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds thirty thousand dollars in value.

(4) A member of the minor's family or the person who holds the property of the minor or who owes a debt to the minor may request that the court establish a custodianship if not previously established, regardless of the value of the transfer. [1991 c 193 § 7.]

11.114.080 Receipt for custodial property. A written confirmation of delivery by a custodian constitutes a sufficient receipt and discharge of the transferor for custodial property transferred to the custodian under this chapter. [1991 c 193 § 8.]

11.114.090 Form and manner of creating custodial property and effecting transfer. (1) Custodial property is created and a transfer is made if:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(g) An interest in any property not described in (a) through (f) of this subsection is transferred to an adult other

than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of subsection (1)(a)(ii) and (g) of this section:

"TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Washington uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

(Electing the following paragraph is optional to the transferor):

If (name of custodian) is or becomes unable to act or to continue to act as custodian, the alternate or successor custodian shall be the first of the following persons, in order of preference and succession, who is then able and willing to act as custodian: (insert the name(s) of the alternate or successor custodian(s)).

- 1.
2.
3.

(Electing the following paragraph is optional to the transferor):

I elect to extend the custodianship to the minor's twenty-fifth birthday. I UNDERSTAND THAT ELECTING TO EXTEND CUSTODIANSHIP TO AGE TWENTY-FIVE MAY CAUSE ME TO LOSE MY ANNUAL EXCLUSION FROM FEDERAL GIFT TAX AND THAT I SHOULD CONSULT WITH AN ATTORNEY OR TAX ADVISOR BEFORE MAKING THIS ELECTION.

Dated:

.
(Signature)

. (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Washington uniform transfers to minors act.

Dated:

. "
(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable. [2006 c 204 § 3; 1991 c 193 § 9.]

Effective date—2006 c 204: "This act takes effect July 1, 2007." [2006 c 204 § 9.]

11.114.100 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship. [1991 c 193 § 10.]

11.114.110 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with RCW 11.114.090(3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under RCW 11.114.090(1); or

(c) Death or incapacity of a person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to RCW 11.114.090 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter. [1991 c 193 § 11.]

11.114.120 Care of custodial property. (1) A custodian shall, as soon as custodial property is made available to the custodian:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter 11.100 RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW 11.100.060. However, the provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: ". . . . as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of eighteen years. [2006 c 204 § 4; 1991 c 193 § 12.]

Effective date—2006 c 204: See note following RCW 11.114.090.

11.114.130 Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, including without limitation all the powers granted to a trustee under RCW 11.98.070, but a custodian may exercise those rights, powers, and authority only in a custodial capacity.

(2) This section does not relieve a custodian from liability for breach of RCW 11.114.120. [1991 c 193 § 13.]

11.114.140 Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of eighteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor. [2006 c 204 § 5; 1991 c 193 § 14.]

Effective date—2006 c 204: See note following RCW 11.114.090.

11.114.150 Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under RCW 11.114.040, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in RCW 11.114.180(6), a custodian need not give a bond.

(4) Notwithstanding RCW 11.114.190, a custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1991 c 193 § 15.]

11.114.160 Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity

of a custodian or successor custodian and, in the absence of knowledge, is not responsible for determining:

- (1) The validity of the purported custodian's designation;
- (2) The propriety of, or the authority under this chapter for, any act of the purported custodian;
- (3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) The propriety of the application of any property of the minor delivered to the purported custodian. [1991 c 193 § 16.]

11.114.170 Liability to third persons. (1) A claim based on:

- (a) A contract entered into by a custodian acting in a custodial capacity;
- (b) An obligation arising from the ownership or control of custodial property;
- (c) A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor; or
- (d) A noncontractual obligation, including obligations in tort, is collectible from the custodial property only if:
 - (i) The obligation was a common incident of the kind of business activity in which the custodian or the custodian's predecessor was properly engaged for the custodianship;
 - (ii) Neither the custodian nor the custodian's predecessor, nor any officer or employee of the custodian or the custodian's predecessor was personally at fault in incurring the obligation; or
 - (iii) Although the obligation did not fall within (d)(i) or (ii) of this subsection, the incident that gave rise to the obligation increased the value of the custodial property.

If the obligation is within (d)(i) or (ii) or [of] this subsection, collection may be had of the full amount of damage proved. If the obligation is within (d)(iii) of this subsection, collection may be had only to the extent of the increase in the value of the trust property.

(2) A custodian is not personally liable:

- (a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity. The addition of the words "custodian" or "as custodian" after the signature of a custodian is adequate revelation of this capacity; or
- (b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodial property is not liable for the obligation under *(b) of this subsection and unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault. [1991 c 193 § 17.]

***Reviser's note:** The reference to (b) of this subsection appears erroneous. Reference to subsection (1)(b) of this section was apparently intended.

11.114.180 Renunciation, resignation, death, or removal of custodian—Designation of successor custo-

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dian. (1) A person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW 11.114.030, the person who made the nomination may nominate a substitute custodian under RCW 11.114.030; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW 11.114.090(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW 11.114.040 as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of eighteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of eighteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of eighteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of eighteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW 11.114.040 or to require the custodian to give appropriate bond. [2006 c 204 § 6; 1991 c 193 § 18.]

Effective date—2006 c 204: See note following RCW 11.114.090.

11.114.190 Accounting by and determination of liability of custodian. (1) A minor who has attained the age of eighteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an account-

ing by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW 11.114.170 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW 11.114.180(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property. [2006 c 204 § 7; 1991 c 193 § 19.]

Effective date—2006 c 204: See note following RCW 11.114.090.

11.114.200 Termination of custodianship—Extension. (1) Subject to RCW 11.114.220, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW 11.114.040 or 11.114.050;

(b) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW 11.114.060 or 11.114.070; or

(c) The minor's death.

(2) The transferor may, in the initial nomination of custodian, extend the custodianship to the earlier of the minor's attainment of twenty-five years of age or the minor's death unless:

(a) The governing will, trust, or instrument creating the power of appointment specifically provides otherwise if the custodial property is transferred under RCW 11.114.040, 11.114.050, or 11.114.060; or

(b) The custodial property is transferred under RCW 11.114.070. In that case, the person nominating the custodian under RCW 11.114.030 may elect to extend the custodianship. If no custodian has been nominated under RCW 11.114.030, the court establishing the custodianship under RCW 11.114.070(4) may extend the custodianship if it determines that doing so would not be contrary to the interest of the minor.

(3) An extension of the custodianship under subsection (2) of this section will be valid only if the transfer creating the custodianship is made on or after July 1, 2007.

(4) Any bank, trust company, insurance company, registered broker-dealer, investment company regulated under the federal Investment Company Act of 1940, investment advisor regulated under the federal Investment Advisors Act of 1940, or other person who makes custodianship forms available for adoption in contemplation of selling assets to or managing assets for a custodianship shall include, in any form made available on or after July 1, 2007, an option to extend the custodianship under subsection (2) of this section and a warning to the transferor that exercising the option to extend may result in the transfer not qualifying for annual exclusion from federal gift tax. An instrument in the form described in

RCW 11.114.090(2) will satisfy the requirements of this subsection. [2006 c 204 § 8; 1991 c 193 § 20.]

Effective date—2006 c 204: See note following RCW 11.114.090.

11.114.210 Applicability. This chapter applies to a transfer within the scope of RCW 11.114.020 made after July 1, 1991, if:

(1) The transfer purports to have been made under the Washington uniform gifts to minors act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this chapter is necessary to validate the transfer. [1991 c 193 § 21.]

11.114.220 Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before July 1, 1991, is validated notwithstanding that there was no specific authority in the Washington uniform gifts to minors act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before July 1, 1991, in a manner and form prescribed in the Washington uniform gifts to minors act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1991. However, as to any custodianship established after August 9, 1971, but prior to January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery from the custodian of all or any portion of the custodial property. [1991 c 193 § 22.]

11.114.230 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1991 c 193 § 23.]

11.114.900 Short title. This chapter may be cited as the uniform transfers to minors act. [1991 c 193 § 24.]

11.114.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 193 § 25.]

11.114.902 Savings—1991 c 193. To the extent that this chapter, by virtue of RCW 11.114.220(2), does not apply to transfers made in a manner prescribed in the uniform gifts to minors act of Washington or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the uniform gifts to minors act of Washington does not affect those transfers or those powers, duties, and immunities. [1991 c 193 § 26.]

11.114.903 Effective date—1991 c 193. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

existing public institutions, and shall take effect July 1, 1991. [1991 c 193 § 34.]

11.114.904 Severability—1991 c 193. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 193 § 35.]

Chapter 11.118 RCW TRUSTS—ANIMALS

Sections

11.118.005	Purpose—Intent.
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11.118.040	Termination of trust.
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11.118.080	Construction of trust language.
11.118.090	Application of rule against perpetuities—Effective date of trust.
11.118.100	Trustee powers.
11.118.110	Application of chapter.

11.118.005 Purpose—Intent. The purpose of this chapter is to recognize and validate certain trusts that are established for the benefit of animals. Under the common law such trusts were unenforceable at law. The legislature intends that such trusts be recognized as valid, and that such trusts be enforceable in accordance with their terms. [2001 c 327 § 1.]

11.118.010 Definition. As used in this chapter, "animal" means a nonhuman animal with vertebrae. [2001 c 327 § 2.]

11.118.020 Validity of animal trust. A trust for the care of one or more animals is valid. The animals that are to be benefited by the trust may be individually identified, or may be identified in such other manner that they can be readily identified. Unless otherwise provided in the trust instrument or in this chapter, the trust will terminate when no animal that is designated as a beneficiary of the trust remains living. [2001 c 327 § 3.]

11.118.030 Use of trust principal or income. Except as expressly provided otherwise in the trust instrument or in RCW 11.118.070, and except as may be necessary to pay the trustee reasonable compensation and to reimburse the trustee for reasonable costs incurred on behalf of the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to any use other than for the trust's purpose or for the benefit of the designated animal or animals. [2001 c 327 § 4.]

11.118.040 Termination of trust. Upon termination of the trust, the trustee shall transfer the unexpended trust property in the following order:

- (1) As directed in the instrument;
- (2) If the trust was created in a nonresiduary clause in the trustor's will or in a codicil to the trustor's will and the will or codicil does not direct otherwise, under the residuary clause

in the trustor's will, which shall be read as though the testator died on the date the trust terminated; and

(3) If no taker is produced by the application of subsection (1) or (2) of this section, to the trustor's heirs under RCW 11.04.015, as it exists at the time of the trust's termination. [2001 c 327 § 5.]

11.118.050 Enforcement of trust provisions. The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust. [2001 c 327 § 6.]

11.118.060 Accounting requirements. Except as ordered by the court or required by the trust instrument, no filing, report, registration, or periodic accounting shall be required of the trust or the trustee. [2001 c 327 § 7.]

11.118.070 Appointment and removal of trustee. If no trustee is designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the removal of an acting trustee and the transfer of the property to another trustee if it is necessary or appropriate in order to assure that the intended use is carried out. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the trustor and the purpose of this chapter. [2001 c 327 § 8.]

11.118.080 Construction of trust language. In construing the language of a trust for an animal, the governing instrument shall be liberally construed to provide the protections of this chapter. It is presumed that language contained in a trust for an animal is not merely precatory or honorary in nature unless it can be shown by clear and cogent evidence that such was the trustor's intent. Extrinsic evidence is admissible in determining the trustor's intent. [2001 c 327 § 9.]

11.118.090 Application of rule against perpetuities—Effective date of trust. RCW 11.98.130 through 11.98.160 apply to trusts that are subject to this chapter. [2001 c 327 § 11.]

11.118.100 Trustee powers. Except as otherwise provided in the trust instrument or in this chapter, all powers and duties conferred on a trustee under Washington law also apply to the trustee of a trust for animals. [2001 c 327 § 12.]

11.118.110 Application of chapter. This chapter applies to trusts that are created on or after July 22, 2001, and to trusts that are in existence on July 22, 2001, but that are revocable by the trustor on July 22, 2001. If a trustor is incompetent to exercise a power of revocation on July 22, 2001, this chapter does not apply to such trust unless the trustor later becomes competent to exercise such power of revocation, in which case this chapter applies to such trust. [2001 c 327 § 13.]

Title 12

DISTRICT COURTS—CIVIL PROCEDURE

Chapters

- 12.04 Commencement of actions.**
- 12.08 Pleadings.**
- 12.12 Trial.**
- 12.16 Witnesses and depositions.**
- 12.20 Judgments.**
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- 12.40 Small claims.**

District and other courts of limited jurisdiction: Chapter 3.30 RCW.
Garnishment: Chapter 6.27 RCW.
General provisions regarding district judges: Title 3 RCW.
Jurisdiction of justice of the peace: State Constitution Art. 4 § 10 (Amendment 28).
Justice without unnecessary delay: State Constitution Art. 1 § 10.
Ne exeat, jurisdiction of district judge: RCW 7.44.060.
Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.
Removal of certain civil actions to superior court: Chapter 4.14 RCW.

Chapter 12.04 RCW COMMENCEMENT OF ACTIONS

Sections

- 12.04.010 Civil actions—Commencement.
- 12.04.020 Action to recover debt—Summons—Service.
- 12.04.030 Action by complaint and notice.
- 12.04.040 Service of complaint and notice.
- 12.04.050 Process—Who may serve.
- 12.04.060 Process—Service by constable or sheriff.
- 12.04.070 Process—Return—Fees.
- 12.04.080 Process—Service by person appointed by justice—Return—Exceptions.
- 12.04.090 Proof of service.
- 12.04.100 Service by publication.
- 12.04.110 Proof of service by publication.
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- 12.04.204 Form of order in replevin.
- 12.04.205 Form of a writ of attachment.
- 12.04.206 Form of undertaking in replevin.
- 12.04.207 Form of undertaking in attachment—Form of undertaking to discharge attachment.
- 12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

Reviser’s note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.04.010 Civil actions—Commencement. Civil actions in the several justices’ courts of this state may be instituted either by the voluntary appearance and agreement

of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint. [Code 1881 § 1712; 1873 p 335 § 19; 1860 p 245 § 26; RRS § 1755.]

12.04.020 Action to recover debt—Summons—Service. A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his or her claim with the justice of the peace, verified by his or her own oath, or that of his or her agent or attorney, and thereupon the justice of the peace shall, on payment of his or her fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

The State of Washington,
 County. } ss.

To the sheriff or any constable of said county:
 In the name of the state of Washington, you are hereby commanded to summon if he or she (or they) be found in your county to be and appear before me at on day of at o’clock p.m. or a.m., to answer the complaint of for a failure to pay him or her a certain demand, amounting to dollars and cents, upon (here state briefly the nature of the claim) and of this writ make due service and return.
 Given under my hand this day of 19...
, Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff’s claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his or her place of abode with some person over twelve years of age, a true copy of such summons, certified by the officer to be such. [2010 c 8 § 3001; Code 1881 § 1713; 1873 p 335 § 20; 1860 p 245 § 29; RRS § 1758.]

12.04.030 Action by complaint and notice. Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his or her complaint verified by his or her own oath or that of his or her agent or attorney with the justice, and when such complaint is so filed, upon payment of his or her fees if

demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

The State of Washington,
..... County. } ss.

To

You are hereby notified to be and appear at my office in on the day of, 19 ... , at the hour of M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

Dated, 19 ...
....., J. P.

[2010 c 8 § 3002; Code 1881 § 1714; 1873 p 336 § 21; 1860 p 245 § 29; RRS § 1759.]

12.04.040 Service of complaint and notice. The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his or her place of abode, with some person over twelve years of age, a true copy of the complaint and notice. [2010 c 8 § 3003; 1925 ex.s. c 181 § 1; Code 1881 § 1715; 1873 p 337 § 22; RRS § 1761.]

12.04.050 Process—Who may serve. All process issued by district court judges of the state and all executions and writs of attachment or of replevin shall be served by a sheriff or a deputy, but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of eighteen years and not a party to the action. [1987 c 442 § 1102; 1971 ex.s. c 292 § 11; 1903 c 19 § 1; 1895 c 102 § 1; 1893 c 108 § 1; Code 1881 § 1716; 1873 p 337 § 23; RRS § 1762. Formerly RCW 12.04.050 and 12.04.060, part.]

Additional notes found at www.leg.wa.gov

12.04.060 Process—Service by constable or sheriff. All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his or her duly appointed deputy; and all fees for such service shall be paid into the county treasury. [2010 c 8 § 3004; 1909 c 132 § 1; RRS § 1760. FORMER PARTS OF SECTION: 1903 c 19 § 1, part, now codified in RCW 12.04.050.]

12.04.070 Process—Return—Fees. Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner, and place of service and indorse thereon the legal fees therefor and shall sign his or her name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice his or her affidavit, stating the time, place, and manner of the service of such summons or notice and complaint and shall indorse thereon the legal fees therefor. [2010 c 8 § 3005; 1959 c 99 § 1; 1903 c 19 § 2; 1895 c 102 § 2; 1893 c 108 § 2; Code 1881 § 1717; 1873 p 337 § 24; 1860 p 246 § 37; 1854 p 229 § 31; RRS § 1763.]

12.04.080 Process—Service by person appointed by justice—Return—Exceptions. Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his or her name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his or her fees for service thereon: PROVIDED, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: PROVIDED FURTHER, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person eighteen years of age or over and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [2010 c 8 § 3006; 1971 ex.s. c 292 § 12; 1903 c 19 § 3; Code 1881 § 1718; 1873 p 337 § 25; RRS § 1764.]

Additional notes found at www.leg.wa.gov

12.04.090 Proof of service. Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his or her return signed by him or her and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service. [2010 c 8 § 3007; Code 1881 § 1719; 1873 p 337 § 26; RRS § 1765.]

12.04.100 Service by publication. In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some newspaper of general circulation in the county wherein the action is commenced, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of the notice.

The notice may be substantially as follows:

The State of Washington,
County of } ss.

In justice's court, justice.

To

You are hereby notified that has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in, in county, state of Washington, on the day of, A.D. 19 ... , at the hour of o'clock ... m., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement).

Complaint filed, A.D. 19 . . .

., J. P.

[1985 c 469 § 6; Code 1881 § 1720; 1873 p 337 § 27; RRS § 1766.]

Legal publications: Chapter 65.16 RCW.

12.04.110 Proof of service by publication. Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreperson, or principal clerk, showing the same. [2010 c 8 § 3008; Code 1881 § 1721; 1873 p 338 § 28; RRS § 1767.]

12.04.120 Written admission as proof of service. The written admission of the defendant, his or her agent or attorney, indorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case. [2010 c 8 § 3009; Code 1881 § 1722; 1873 p 338 § 29; RRS § 1768.]

12.04.130 Jurisdiction, when acquired. The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. In the case of proceedings to civilly enforce a money judgment entered in a municipal court or municipal department of a district court organized under the laws of this state, the court shall have jurisdiction over the proceedings from the time of filing an abstract or transcript of judgment; upon which filing the municipal judgment shall be recognized as a judgment of the court, provided that the court shall not have authority to vacate or amend the underlying municipal judgment. [2007 c 46 § 4; Code 1881 § 1723; 1873 p 338 § 30; RRS § 1769.]

12.04.140 Action by person under eighteen years. Except as provided under RCW 26.50.020, no action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his or her next friend in such action, who shall be responsible for the costs therein. [1992 c 111 § 10; 1971 ex.s. c 292 § 75; Code 1881 § 1753; 1873 p 343 § 52; 1854 p 230 § 40; RRS § 1771.]

Findings—1992 c 111: See note following RCW 26.50.030.

Additional notes found at www.leg.wa.gov

12.04.150 Action against defendant under eighteen years—Guardian ad litem. After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed, except as provided under RCW 26.50.020. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he or she neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the

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justice; and such guardian for the defendant shall not be liable for any costs in the action. [1992 c 111 § 11; 1971 ex.s. c 292 § 76; Code 1881 § 1754; 1873 p 343 § 53; 1854 p 230 § 41; RRS § 1772.]

Findings—1992 c 111: See note following RCW 26.50.030.

Additional notes found at www.leg.wa.gov

12.04.160 Time for appearance. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he or she may postpone the time of appearance until the close of such trial. [2010 c 8 § 3010; 1957 c 89 § 1; Code 1881 § 1755; 1873 p 344 § 54; 1854 p 230 § 42; RRS § 1773.]

12.04.170 Security for nonresident costs. Whenever the plaintiff in an action, or in a garnishment or other proceeding is a nonresident of the county or begins such action or proceeding as the assignee of some other person, or of a firm or corporation, as to all causes of action sued upon, the justice may require of him or her security for the costs in the action or proceeding in a sum not exceeding fifty dollars, at the time of the commencement of the action, and after an action or proceeding has been commenced by such nonresident or assignee plaintiff, the defendant or garnishee defendant may require such security by motion; and all proceedings shall be stayed until such security has been given. [2010 c 8 § 3011; 1929 c 102 § 1; 1905 c 10 § 1; Code 1881 § 1725; 1854 p 228 § 27; RRS § 1777.]

12.04.180 Cost bond in lieu of security. In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of fifty dollars running to the state of Washington, with surety approved by the court, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him or her in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [2010 c 8 § 3012; 1929 c 102 § 2; RRS § 1777 1/2.]

12.04.190 Penalty for failure to execute process or false return. If any officer, without showing good cause therefor, fail to execute any process to him or her delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action. [2010 c 8 § 3013; Code 1881 § 1752; 1873 p 343 § 51; 1854 p 230 § 39; RRS § 1776.]

12.04.200 Forms or equivalents prescribed. The forms or equivalent forms as set forth in RCW 12.04.201 through 12.04.208 may be used by justices of the peace, in

civil actions and proceedings under this chapter. [1957 c 89 § 3. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.201 Form of subpoena.

FORM OF SUBPOENA

State of Washington,
County of } ss.

To :
In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the day of , 19 , at o'clock in the noon, at his or her office in , to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of (the plaintiff, or defendant as the case may be).

Given under my hand this day of , 19
J. P., Justice of the Peace.

[2010 c 8 § 3014; 1957 c 89 § 4. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.203 Form of execution—Form of execution against principal and surety, after expiration of stay of execution.

FORM OF EXECUTION

State of Washington,
County of } ss.

To the sheriff or any constable of said county:
Whereas, judgment against C D, for the sum of dollars, and dollars cost of suit, was recovered on the day of , 19 , before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his or her debt, interests and costs.

Given under my hand this day of , 19
J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION

State of Washington,
County of } ss.

To the sheriff or any constable of said county:
Whereas, judgment against C D for the sum of dollars, and for dollars, costs of suit, was recovered on the day of , 19 , before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the day of , 19 , E F became surety to pay said judgment aforesaid, agreeably to law, in the payment of which said C D and E F have failed; these are, therefore, in the name, etc., [as in the common form].

[2010 c 8 § 3015; 1957 c 89 § 5. Prior: Code 1881 § 1895, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.204 Form of order in replevin.

FORM OF ORDER IN REPLEVIN

State of Washington,
County of } ss.

To the sheriff or any constable of said county:
In the name of the state of Washington, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this day of , 19
J. P., Justice of the Peace.

[1957 c 89 § 6. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.205 Form of a writ of attachment.

FORM OF A WRIT OF ATTACHMENT

State of Washington,
County of } ss.

To the sheriff or any constable of said county:
In the name of the state of Washington, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects and credits of C D, (excepting such as the law exempts), or so much thereof as shall satisfy the sum of dollars, with interest and cost of suit, in whosoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this day of , 19
J. P., Justice of the Peace.

[1957 c 89 § 7. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.206 Form of undertaking in replevin.

FORM OF UNDERTAKING IN REPLEVIN

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: [here set forth the property claimed]. Now, therefore we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of dollars for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him or her of such sum as may for any cause be recovered against the plaintiff.

Dated the day of, 19 A B, E F, G H.

[2010 c 8 § 3016; 1957 c 89 § 8. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.207 Form of undertaking in attachment— Form of undertaking to discharge attachment.

FORM OF UNDERTAKING IN ATTACHMENT

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he or she may sustain by reason of the said attachment and not exceeding the sum of dollars.

Dated the day of, 19 A B, E F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of dollars, [double the value of the property], engaging to deliver the property attached, to wit: [here set forth a list of articles attached], or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this day of, 19 C D, E F, G H.

[2010 c 8 § 3017; 1957 c 89 § 9. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 § 19, part; RRS § 1890, part.]

(2012 Ed.)

12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON

Whereas, L M, claims to be owner of, and have the right to possession of certain personal property, to wit: [here describe it] which has been taken by J K, constable in county, upon an execution by J P, justice of the peace in and for the county of, upon a judgment obtained by A B, plaintiff, against C D, defendant; Now, therefore, we A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of dollars, to indemnify the said J K against such claim. A B, E F, G H.

[1957 c 89 § 10. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

Chapter 12.08 RCW PLEADINGS

Sections

12.08.010	When pleadings take place.
12.08.020	What constitute pleadings.
12.08.030	Pleadings oral or written.
12.08.040	Docketing or filing.
12.08.050	Denial of knowledge or information—Effect.
12.08.060	Pleading account or instrument.
12.08.070	Verification.
12.08.080	Uncontroverted allegations—Effect.
12.08.090	Objections to pleadings—Amendment.
12.08.100	Variance between pleading and proof.
12.08.110	Amendments—Continuance.
12.08.120	Setoff—Pleading.

12.08.010 When pleadings take place. The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed or unless the justice shall, for good cause shown, allow a longer time than the time of appearance. [Code 1881 § 1756; 1873 p 344 § 55; 1854 p 231 § 43; RRS § 1778.]

12.08.020 What constitute pleadings. The pleadings in the justice's court shall be:

(1) The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

(2) The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

(3) When the answer sets up a setoff, by way of defense, the reply of the plaintiff. [Code 1881 § 1757; 1873 p 344 § 56; 1854 p 231 § 44; RRS § 1779.]

12.08.030 Pleadings oral or written. The pleadings in justices' courts may be oral or in writing. [1957 c 89 § 11; Code 1881 § 1758; 1873 p 344 § 57; 1854 p 231 § 45; RRS § 1780.]

12.08.040 Docketing or filing. When the pleadings are oral, the substance of them shall be entered by the justice in

his or her docket. When in writing they shall be filed in his or her office and a reference made to them in his or her docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. [2010 c 8 § 3018; Code 1881 § 1759; 1873 p 345 § 58; 1854 p 231 § 46; RRS § 1781.]

12.08.050 Denial of knowledge or information—Effect. A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial. [Code 1881 § 1760; 1873 p 345 § 59; 1854 p 231 § 47; RRS § 1782.]

12.08.060 Pleading account or instrument. When the cause of action, or setoff, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him or her thereon, from the adverse party, a specified sum, which he or she claims to recover or setoff. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence. [2010 c 8 § 3019; Code 1881 § 1761; 1873 p 345 § 60; 1854 p 231 § 48; RRS § 1783.]

12.08.070 Verification. Every complaint, answer, or reply shall be verified by the oath of the party pleading; or if he or she be not present, by the oath of his or her attorney or agent, to the effect that he or she believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified. [2010 c 8 § 3020; Code 1881 § 1762; 1873 p 345 § 61; 1854 p 232 § 49; RRS § 1784.]

12.08.080 Uncontroverted allegations—Effect. Every material allegation in a complaint, or relating to a setoff in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his or her case. [2010 c 8 § 3021; Code 1881 § 1763; 1873 p 345 § 62; 1854 p 232 § 50; RRS § 1785.]

12.08.090 Objections to pleadings—Amendment. Either party may object to a pleading by his or her adversary, or to any part thereof that is not sufficiently explicit for him or her to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded. [2010 c 8 § 3022; Code 1881 § 1764; 1873 p 345 § 63; 1854 p 232 § 51; RRS § 1786.]

12.08.100 Variance between pleading and proof. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his

or her prejudice thereby. [2010 c 8 § 3023; Code 1881 § 1765; 1873 p 346 § 64; 1854 p 232 § 52; RRS § 1787.]

12.08.110 Amendments—Continuance. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party. [Code 1881 § 1766; 1873 p 346 § 65; 1854 p 232 § 53; RRS § 1788.]

12.08.120 Setoff—Pleading. To entitle a defendant to any setoff he or she may have against the plaintiff, he or she must allege the same in his or her answer; and the statutes regulating setoffs in the superior court, shall in all respects be applicable to a setoff in a justice's court, if the amount claimed to be setoff, after deducting the amount found due to the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff. [2010 c 8 § 3024; Code 1881 § 1767; 1873 p 346 § 66; 1854 p 232 § 54; RRS § 1789.]

Reviser's note: Justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

Chapter 12.12 RCW TRIAL

Sections

12.12.010	Continuances limited.
12.12.020	Trial by justice.
12.12.030	Jury—Number—Qualifications—Fee.
12.12.070	Oath administered.
12.12.080	Delivery of verdict.
12.12.090	Discharge of jury.

12.12.010 Continuances limited. When the pleadings of the party shall have taken place, the justice shall, upon the application of either party, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the superior court. [1957 c 89 § 12; Code 1881 § 1769; 1873 p 346 § 68; 1854 p 232 § 56; RRS § 1847.]

12.12.020 Trial by justice. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly. [Code 1881 § 1782; 1873 p 350 § 81; 1854 p 237 § 82; RRS § 1848.]

12.12.030 Jury—Number—Qualifications—Fee.

After the appearance of the defendant, and before the judge shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful persons having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a lesser number: PROVIDED, That the party demanding the jury shall first pay to the clerk of the court the sum of one hundred twenty-five dollars, which shall be paid over by the clerk of the court to the county, and such amount shall be taxed as costs against the losing party. [2005 c 457 § 13; 1981 c 260 § 3. Prior: 1977 ex.s. c 248 § 2; 1977 ex.s. c 53 § 2; 1888 p 118 § 1; Code 1881 § 1770; 1863 p 438 § 51; 1862 p 58 § 1; 1854 p 235 § 70; RRS § 1849.]

Intent—2005 c 457: See note following RCW 43.08.250.

12.12.070 Oath administered. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause. [Code 1881 § 1776; 1873 p 348 § 75; 1854 p 236 § 76; RRS § 1853.]

12.12.080 Delivery of verdict. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his or her docket. [2010 c 8 § 3025; Code 1881 § 1777; 1873 p 348 § 76; 1854 p 236 § 77; RRS § 1854.]

12.12.090 Discharge of jury. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him or her, having been out a reasonable time, cannot agree on their verdict, he or she may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him or her, or upon such other evidence as they may produce. [2010 c 8 § 3026; Code 1881 § 1778; 1873 p 348 § 77; 1854 p 236 § 78; RRS § 1855.]

Chapter 12.16 RCW

WITNESSES AND DEPOSITIONS

Sections

- 12.16.015 District court may compel attendance of witness.
- 12.16.020 Service of subpoena.
- 12.16.030 Attachment for nonappearance.
- 12.16.040 Service of attachment—Fees.
- 12.16.050 Damages for nonappearance.
- 12.16.060 Party to action as adverse witness.
- 12.16.070 Testimony of party may be rebutted.
- 12.16.080 Procedure on party’s refusal to testify.
- 12.16.090 Examination of party in his or her own behalf.

Oaths and affirmations: Chapter 5.28 RCW.

12.16.015 District court may compel attendance of witness. Any person may be compelled to attend as a witness before a district court in accordance with chapter 5.56 RCW. [1984 c 258 § 702.]

Additional notes found at www.leg.wa.gov

12.16.020 Service of subpoena. A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him or her a copy at his or her usual place of abode. [2010 c 8 § 3027; Code

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1881 § 1870; 1873 p 370 § 169; 1854 p 233 § 58; RRS § 1899.]

12.16.030 Attachment for nonappearance. Whenever it shall appear to the satisfaction of the justice, by proof made before him or her, that any person, duly subpoenaed to appear before him or her in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his or her agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: PROVIDED, That no attachment shall issue against a witness in any civil action, unless his or her fees for mileage and one day’s attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena. [2010 c 8 § 3028; Code 1881 § 1871; 1873 p 370 § 170; 1854 p 233 § 59; RRS § 1900.]

Attachment of a witness: RCW 5.56.070.

When witness must attend: RCW 5.56.010.

12.16.040 Service of attachment—Fees. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he or she show reasonable cause, to the satisfaction of the justice, for his or her omission to attend; in which case the party requiring such attachment shall pay all such costs. [2010 c 8 § 3029; Code 1881 § 1872; 1873 p 370 § 171; 1854 p 233 § 60; RRS § 1901.]

Attachment, to whom directed—Execution: RCW 5.56.080.

12.16.050 Damages for nonappearance. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he or she may have been subpoenaed, for all damages which such party may have sustained by reason of his or her nonappearance: PROVIDED, That such witness had the fees allowed for mileage and one day’s attendance paid, or tendered him or her, in advance, if demanded by him or her at the time of the service. [2010 c 8 § 3030; Code 1881 § 1873; 1873 p 371 § 172; 1854 p 234 § 61; RRS § 1902.]

Result of failure to attend: RCW 5.56.060, 5.56.061.

When witness must attend: RCW 5.56.010.

12.16.060 Party to action as adverse witness. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his or her deposition taken. [2010 c 8 § 3031; Code 1881 § 1874; 1873 p 371 § 173; 1854 p 234 § 62; RRS § 1903.]

12.16.070 Testimony of party may be rebutted. The examination of a party thus taken, may be rebutted by adverse testimony. [Code 1881 § 1875; 1873 p 371 § 174; 1854 p 234 § 63; RRS § 1904.]

12.16.080 Procedure on party's refusal to testify. If a party refuse to attend and testify at the trial, or give his or her deposition before trial, when required, his or her complaint, answer or reply, may be stricken out, and judgment taken against him or her. [2010 c 8 § 3032; Code 1881 § 1876; 1873 p 371 § 175; 1854 p 234 § 64; RRS § 1905.]

Penalty for failure to testify: Rules of court: CR 43(f)(3).

12.16.090 Examination of party in his or her own behalf. A party examined by an adverse party may be examined on his or her own behalf, in respect to any matter pertinent to the issue. But if he or she testify to any new matter, not responsive to the inquiries put to him or her by the adverse party, or necessary to qualify or explain his or her answer thereto, or to discharge, when his or her answer would charge himself or herself, such adverse party may offer himself or herself as a witness, and he or she shall be so received. [2010 c 8 § 3033; Code 1881 § 1877; 1873 p 371 § 176; 1854 p 234 § 65; RRS § 1906.]

Chapter 12.20 RCW JUDGMENTS

Sections

12.20.010	Judgment of dismissal.
12.20.020	Judgment by default.
12.20.030	Judgment on merits.
12.20.040	Tender—Effect of, on judgment.
12.20.050	Setoff—Limitation of judgment.
12.20.060	Judgment for costs—Attorney's fee—Costs in civil actions for the recovery of money only.
12.20.070	Proceedings where title to land is involved.

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.20.010 Judgment of dismissal. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When he or she fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

(3) When it is objected at the trial, and appears by the evidence that the action is brought in the wrong precinct; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal. [2010 c 8 § 3034; Code 1881 § 1780; 1873 p 348 § 79; 1863 p 349 § 61; 1854 p 236 § 80; RRS § 1857.]

12.20.020 Judgment by default. When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

(1) When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

(2) In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

(3) The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he or she shall deem sufficient and proper. Such judgment shall only be set aside upon five days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either upon affidavits or oral testimony as he or she may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits: PROVIDED, That, no justice of the peace shall pay out or turn over money or property received by him or her by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired. [2010 c 8 § 3035; 1915 c 41 § 1; Code 1881 § 1781; 1873 p 349 § 79; 1863 p 349 § 62; 1854 p 237 § 81; RRS § 1858.]

12.20.030 Judgment on merits. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered within three days after the close of the trial. [1957 c 89 § 13; Code 1881 § 1783; 1873 p 350 § 82; 1854 p 237 § 83; RRS § 1859.]

12.20.040 Tender—Effect of, on judgment. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him or her for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he or she do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he or she shall have been notified of the offer of the defendant, but such costs shall be adjudged against him or her, and if he or she recover, deducted from his or her recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided. [2010 c 8 § 3036; Code 1881 § 1784; 1873 p 350 § 83; 1863 p 350 § 65; 1854 p 237 § 84; RRS § 1860.]

12.20.050 Setoff—Limitation of judgment. When the setoff of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant. [Code 1881 § 1768; 1873 p 346 § 67; 1854 p 232 § 55; RRS § 1861.]

12.20.060 Judgment for costs—Attorney's fee—Costs in civil actions for the recovery of money only. (1) When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the

action, the judge shall enter up a judgment in favor of the defendant for the amount of his or her costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees in the amount provided in RCW 4.84.080 as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he or she obtains, exclusive of costs, a judgment in the sum of fifty dollars or more: AND PROVIDED FURTHER, That if the plaintiff obtains judgment, exclusive of costs, of at least fifty dollars but less than two hundred dollars, the judge shall include attorney fees of one hundred twenty-five dollars as part of the costs.

(2)(a) In any district court civil action for the recovery of money only, the plaintiff will be considered the prevailing party for the purpose of awarding costs, including a statutory attorney fee, if: (i) The defendant makes full or partial payment of the amounts sought by the plaintiff prior to the entry of judgment; and (ii) before such payment is tendered, the plaintiff has notified the defendant in writing that the full or partial payment of the amounts sued for might result in an award of costs. The plaintiff is not entitled to a statutory attorney fee unless the amount prayed for, exclusive of costs, is fifty dollars or more, and if the amount prayed for, exclusive of costs, is at least fifty dollars but less than two hundred dollars, the judgment must include a statutory attorney fee of one hundred twenty-five dollars as part of the costs.

(b) For the purposes of this section, "plaintiff" includes a counterclaimant, cross-claimant, and third-party plaintiff, and "defendant" includes a party defending a counterclaim, cross-claim, or third-party claim.

(c) A party may demand, offer, or accept payment of statutory costs before the entry of judgment in an action.

(d) This section may not be construed to (a) [(i)] authorize an award of costs if the action is resolved by a negotiated settlement or (b) [(ii)] limit or bar the operation of cost-shifting provisions of other statutes or court rules. [2009 c 240 § 3; 2004 c 123 § 2; 1993 c 341 § 1; 1985 c 240 § 2; 1984 c 258 § 89; 1975-'76 2nd ex.s. c 30 § 1; 1915 c 43 § 1; 1893 c 12 § 1; Code 1881 § 1785; 1873 p 350 § 84; 1854 p 237 § 85; RRS § 1862.]

Attorneys' fee as costs in damage actions of ten thousand dollars or less: RCW 4.84.250 through 4.84.300.

Additional notes found at www.leg.wa.gov

12.20.070 Proceedings where title to land is involved.

If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his or her docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his or her docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit. [2010 c 8 § 3037; Code 1881 § 1868; 1873 p 369 § 167; 1854 p 235 § 69; RRS § 1863.]

(2012 Ed.)

Chapter 12.28 RCW REPLEVIN

Sections

12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property.

12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property. The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of the property, after a hearing, as provided in chapter 7.64 RCW. [1979 ex.s. c 132 § 8.]

Additional notes found at www.leg.wa.gov

Chapter 12.36 RCW SMALL CLAIMS APPEALS (Formerly: Appeals)

Sections

12.36.010 Appeal in small claims action authorized.
12.36.020 Appeal—Procedure—Notice filing—Fee—Bond or undertaking—Service—Costs of record preparation.
12.36.030 Stay of proceedings—Procedures—Return of property upon stay—Enforcement upon denial.
12.36.050 Certification of record by district court—Transmittal to superior court—Powers of superior court upon transmittal.
12.36.055 Trial of an appeal from small claims judgment.
12.36.080 No dismissal for defective bond—Notice.
12.36.090 Judgment against appellant and sureties.

Costs in appeal from district courts: RCW 4.84.130.

12.36.010 Appeal in small claims action authorized.

Any person wishing to appeal a judgment or decision in a small claims action may, in person or by his or her agent, appeal to the superior court of the county where the judgment was rendered or decision made: PROVIDED, There shall be no appeal allowed unless the amount in controversy, exclusive of costs, exceeds two hundred fifty dollars: PROVIDED FURTHER, That an appeal from the court's determination or order on a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). [1997 c 352 § 7; 1979 ex.s. c 136 § 21; 1929 c 58 § 1; RRS § 1910. Prior: 1905 c 20 § 1; 1891 c 29 § 1; Code 1881 § 1858; 1873 p 367 § 156; 1854 p 252 § 160.]

Additional notes found at www.leg.wa.gov

12.36.020 Appeal—Procedure—Notice filing—Fee—Bond or undertaking—Service—Costs of record preparation. (1) To appeal a judgment or decision in a small claims action, an appellant shall file a notice of appeal in the district court, pay the statutory superior court filing fee, post the required bond or undertaking, and serve a copy of the notice of appeal on all parties of record within thirty days after the judgment is rendered or decision made.

(2) No appeal may be allowed, nor proceedings on the judgment or decision stayed, unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the district court. The bond or undertaking shall be executed with two or more personal sureties, or a surety company as surety, to be approved by the district court, in a sum equal to twice the amount of the judgment and costs, or twice the amount in controversy, whichever is greater, conditioned that the appellant will pay any judgment,

including costs, as may be rendered on appeal. No bond is required if the appellant is a county, city, town, or school district.

(3) When an appellant has filed a notice of appeal, paid the statutory superior court filing fee and the costs of preparation of the complete record as set forth in *RCW 3.62.060(7), and posted the bond or undertaking as required, the clerk of the district court shall immediately file a copy of the notice of appeal, the filing fee, and the bond or undertaking with the superior court. [1998 c 52 § 1; 1997 c 352 § 8; 1929 c 58 § 2; RRS § 1911. Prior: 1891 c 29 § 1; Code 1881 § 1859; 1873 p 367 §§ 157, 158; 1854 p 252 §§ 161, 162.]

*Reviser's note: RCW 3.62.060 was amended by 2009 c 372 § 1, changing subsection (7) to subsection (8). RCW 3.62.060 was subsequently amended by 2011 1st sp.s. c 44 § 4, changing subsection (8) to subsection (1)(h).

12.36.030 Stay of proceedings—Procedures—Return of property upon stay—Enforcement upon denial. When an appeal and any necessary bond or undertaking are properly filed in superior court pursuant to RCW 12.36.020(3), the appellant may move in superior court to stay all further proceedings in the district court. If the stay is granted, all further proceedings in district court on the judgment shall be suspended. If proceedings have commenced on motion of the appellant the court may order the proceedings halted and such process recalled.

If any property is held pursuant to such proceedings at the time the stay is granted and the process recalled, such property shall be returned immediately to the party entitled to such property.

If the requested stay is denied, or no stay is requested, the judgment will be enforced in superior court in the same manner as any other judgment rendered in that court. [1998 c 52 § 2; 1997 c 352 § 9; 1929 c 58 § 3; RRS § 1912. Prior: Code 1881 § 1861; 1873 p 368 § 160; 1854 p 252 § 164.]

12.36.050 Certification of record by district court—Transmittal to superior court—Powers of superior court upon transmittal. (1) Within fourteen days after a small claims appeal has been filed in superior court by the clerk of the district court pursuant to RCW 12.36.020(3), the complete record as defined in subsection (2) of this section shall be made and certified by the clerk of the district court to be correct. The clerk shall then immediately transmit the complete record to superior court. The superior court shall then become possessed of the cause. All further proceedings shall be in the superior court, including enforcement of any judgment rendered. Any superior court procedures such as arbitration or other methods of dispute resolution may be utilized by the superior court in its discretion.

(2) The complete record shall consist of a transcript of all entries made in the district court docket relating to the case, together with all the process and other papers relating to the case filed with the district court and a contemporaneous recording made of the proceeding. [2001 c 156 § 1; 1998 c 52 § 3; 1997 c 352 § 10; 1929 c 58 § 5; RRS §§ 1914, 1915. Prior: 1891 c 29 § 4; Code 1881 § 1863; 1873 p 368 § 162; 1854 p 252 § 166. Formerly RCW 12.36.050 and 12.36.060.]

12.36.055 Trial of an appeal from small claims judgment. (1) The appeal from a small claims judgment or decision shall be de novo upon the record of the case, as entered by the district court.

(2) Any cases heard in superior court pursuant to this section may be heard by a duly appointed commissioner. As used in this chapter "judge" includes any duly appointed commissioner. [2001 c 156 § 2; 1997 c 352 § 11.]

12.36.080 No dismissal for defective bond—Notice. No appeal under this chapter shall be dismissed on account of any defect in the bond on appeal, if, within ten days of notice to appellant of such defect, the appellant executes and files in the court currently possessed of the cause such bond as should have been executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect. [1998 c 52 § 4; 1997 c 352 § 12; 1929 c 58 § 7; RRS § 1917. Prior: Code 1881 § 1867; 1873 p 369 § 165; 1854 p 253 § 169.]

12.36.090 Judgment against appellant and sureties. In all cases of appeal to the superior court under this chapter, if the judgment is against the appellant, in whole or in part, such judgment shall be rendered against the appellant and his or her sureties on the bond on appeal. [1997 c 352 § 13; 1929 c 58 § 8; RRS § 1918. Prior: Code 1881 § 1867; 1873 p 369 § 166; 1854 p 253 § 170.]

Chapter 12.40 RCW SMALL CLAIMS

Sections

12.40.010	Department authorized—Jurisdictional amount.
12.40.020	Action—Commencement—Fee—Surcharge.
12.40.025	Transfer of action to small claims department.
12.40.027	Removal to superior court—Restrictions—Simultaneous maintenance of claims—Joinder of claims on appeal.
12.40.030	Setting case for hearing—Notice—Time of trial.
12.40.040	Service of notice of claim—Fee.
12.40.045	Recovery of fees as court costs.
12.40.050	Requisites of claim.
12.40.060	Requisites of notice.
12.40.070	Verification of claim.
12.40.080	Hearing.
12.40.090	Informal pleadings.
12.40.100	Payment of monetary judgment.
12.40.105	Increase of judgment upon failure to pay.
12.40.110	Procedure on nonpayment.
12.40.120	Appeals—Setting aside judgments.
12.40.800	Small claims informational brochure—Preparation and distribution.

12.40.010 Department authorized—Jurisdictional amount. In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court." The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed five thousand dollars. [2008 c 227 § 2; 2001 c 154 § 1; 1991 c 71 § 1; 1988 c 85 § 1; 1984 c 258 § 57; 1981 c 331 § 10; 1979 c 102 § 4; 1973 c 128 § 1; 1970 ex.s. c 83 § 1; 1963 c 123 § 1; 1919 c 187 § 1; RRS § 1777-1.]

Effective date—Subheadings not law—2008 c 227: See notes following RCW 3.50.003.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Additional notes found at www.leg.wa.gov

12.40.020 Action—Commencement—Fee—Surcharge. (1) A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW 12.40.050, in the small claims department. A filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035 shall be paid when the claim is filed. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035.

(2) Until July 1, 2013, in addition to the fees required by this section, an additional surcharge of ten dollars shall be charged on the filing fees required by this section, of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county. [2011 1st sp.s. c 44 § 2; 2009 c 572 § 2; 2005 c 457 § 14; 1990 c 172 § 3; 1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

Intent—2005 c 457: See note following RCW 43.08.250.

Additional notes found at www.leg.wa.gov

12.40.025 Transfer of action to small claims department. A defendant in a district court proceeding in which the claim is within the jurisdictional amount for the small claims department may in accordance with court rules transfer the action to the small claims department. In the event of such a transfer the provisions of RCW 12.40.070 shall not be applicable if the plaintiff was an assignee of the claim at the time the action was commenced nor shall the provisions of RCW 12.40.080 prohibit an attorney from representing the plaintiff if he or she was the attorney of record for the plaintiff at the time the action was commenced. [2010 c 8 § 3038; 1984 c 258 § 59; 1970 ex.s. c 83 § 2.]

Additional notes found at www.leg.wa.gov

12.40.027 Removal to superior court—Restrictions—Simultaneous maintenance of claims—Joinder of claims on appeal. RCW 4.14.010 regarding removal of actions to superior court shall not apply to cases originally filed in small claims court, or transferred to the small claims court pursuant to RCW 12.40.025. No defendant or third party defendant may remove a small claims case from small claims court as a matter of right by merely filing a claim or counterclaim or other request for relief that is beyond the jurisdiction of the small claims court. Claims, counterclaims, or other requests for relief filed by a defendant or third party defendant in excess of the jurisdiction of small claims court may be maintained simultaneously in superior court as a separate action brought by such defendant or third party defendant. Such a superior court action does not affect the jurisdiction of the small claims court to hear the original small claims case. The decision of the small claims court shall have no preclusive effect on a superior court action brought pursuant to this section. If the small claims case is appealed, it shall be automatically joined with any superior court case filed pursuant to this section, and the procedures set forth in RCW 12.36.055 shall not apply.

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Nothing in this section may be construed to limit the small claims court from transferring a small claims case to district court or superior court after notice and hearing. [1997 c 352 § 5.]

12.40.030 Setting case for hearing—Notice—Time of trial. Upon filing of a claim, the court shall set a time for hearing on the matter. The court shall issue a notice of the claim which shall be served upon the defendant to notify the defendant of the hearing date. A trial need not be held on this first appearance, if dispute resolution services are offered instead of trial, or local practice rules provide that trials will be held on different days. [1997 c 352 § 1; 1984 c 258 § 60; 1981 c 330 § 3; 1980 c 162 § 11; 1963 c 123 § 2; 1919 c 187 § 3; RRS § 1777-3.]

Additional notes found at www.leg.wa.gov

12.40.040 Service of notice of claim—Fee. The notice of claim can be served either as provided for the service of summons or complaint and notice in civil actions or by registered or certified mail if a return receipt with the signature of the party being served is filed with the court. No other legal document or process is to be served with the notice of claim. Information from the court regarding the small claims department, local small claims procedure, dispute resolution services, or other matters related to litigation in the small claims department may be included with the notice of claim when served.

The notice of claim shall be served promptly after filing the claim. Service must be complete at least ten days prior to the first hearing.

The person serving the notice of claim shall be entitled to receive from the plaintiff, besides mileage, the fee specified in RCW 36.18.040 for such service; which sum, together with the filing fee set forth in RCW 12.40.020, shall be added to any judgment given for plaintiff. [1997 c 352 § 2; 1984 c 258 § 61; 1981 c 194 § 3; 1970 ex.s. c 83 § 3; 1959 c 263 § 9; 1919 c 187 § 4; RRS § 1777-4.]

Additional notes found at www.leg.wa.gov

12.40.045 Recovery of fees as court costs. In the event persons other than the sheriff or duly appointed deputies charge a fee for services in excess of the fees allowed under RCW 36.18.040, the prevailing party incurring such charges shall be entitled to recover as court costs only the amount of the fees for such services as provided in RCW 36.18.040. [1981 c 194 § 4.]

Additional notes found at www.leg.wa.gov

12.40.050 Requisites of claim. A claim filed in the small claims department shall contain: (1) The name and address of the plaintiff; (2) a statement, in brief and concise form, of the nature and amount of the claim and when the claim accrued; and (3) the name and residence of the defendant, if known to the plaintiff, for the purpose of serving the notice of claim on the defendant. [1984 c 258 § 62; 1919 c 187 § 5; RRS § 1777-5.]

Additional notes found at www.leg.wa.gov

12.40.060 Requisites of notice. The notice of claim directed to the defendant shall contain: (1) The name and

address of the plaintiff; (2) a brief and concise statement of the nature and amount of the claim; (3) a statement directing and requiring defendant to appear personally in the small claims department at a time certain, which shall not be less than five days from the date of service of the notice; and (4) a statement advising the defendant that in case of his or her failure to appear, judgment will be given against defendant for the amount of the claim. [1984 c 258 § 63; 1981 c 331 § 11; 1919 c 187 § 6; RRS § 1777-6.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Additional notes found at www.leg.wa.gov

12.40.070 Verification of claim. A claim must be verified by the real claimant, and no claim shall be filed or prosecuted in the small claims department by the assignee of the claim. [1984 c 258 § 64; 1919 c 187 § 7; RRS § 1777-7.]

Additional notes found at www.leg.wa.gov

12.40.080 Hearing. (1) No attorney-at-law, legal paraprofessional, nor any person other than the plaintiff and defendant, shall appear or participate with the prosecution or defense of litigation in the small claims department without the consent of the judicial officer hearing the case. A corporation may not be represented by an attorney-at-law or legal paraprofessional except as set forth in RCW 12.40.025.

(2) In the small claims department it shall not be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf by witnesses appearing at trial.

(3) The judge may informally consult witnesses or otherwise investigate the controversy between the parties and give judgment or make such orders as the judge may deem to be right, just, and equitable for the disposition of the controversy. [1997 c 352 § 3; 1991 c 71 § 2; 1984 c 258 § 65; 1981 c 331 § 12; 1919 c 187 § 8; RRS § 1777-8.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Additional notes found at www.leg.wa.gov

12.40.090 Informal pleadings. A formal pleading, other than the claim and notice, shall not be necessary to define the issue between the parties. The hearing and disposition of the actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants. An attachment, garnishment or execution shall not issue from the small claims department on any claim except as provided in this chapter. [1984 c 258 § 66; 1919 c 187 § 9; RRS § 1777-9.]

Additional notes found at www.leg.wa.gov

12.40.100 Payment of monetary judgment. If a monetary judgment or order is entered, it shall be the judgment debtor's duty to pay the judgment upon such terms and conditions as the judge shall prescribe. If the judgment is not paid to the prevailing party at the time the judgment is entered and the judgment debtor is present in court, the court may order a payment plan. [1984 c 258 § 67; 1983 c 254 § 1; 1919 c 187 § 10; RRS § 1777-10.]

Additional notes found at www.leg.wa.gov

12.40.105 Increase of judgment upon failure to pay.

If the losing party fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; (2) the amount specified in RCW 36.18.012(2); and (3) any other costs incurred by the prevailing party to enforce the judgment, including but not limited to reasonable attorneys' fees, without regard to the jurisdictional limits on the small claims department. [2004 c 70 § 1; 1998 c 52 § 5; 1995 c 292 § 5; 1983 c 254 § 2.]

Additional notes found at www.leg.wa.gov

12.40.110 Procedure on nonpayment. (1) If the losing party fails to pay the judgment according to the terms and conditions thereof within thirty days or is in arrears on any payment plan, and the prevailing party so notifies the court, the court shall certify the judgment in substantially the following form:

Washington.

In the District Court of County.

. Plaintiff,

vs.

. Defendant.

In the Small Claims Department.

This is to certify that: (1) In a certain action on the day of 19 , wherein was plaintiff and defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law, judgment was entered against in the sum of dollars; (2) the judgment has not been paid within *twenty days or the period otherwise ordered by the court; and (3) pursuant to RCW 12.40.105, the amount of the judgment is hereby increased by any costs of certification under this section and the amount specified in RCW 36.18.012(2).

Witness my hand this day of, 19

.
Clerk of the Small Claims Department.

(2) The clerk shall forthwith enter the judgment transcript on the judgment docket of the district court; and thereafter garnishment, execution, and other process on execution provided by law may issue thereon, as in other judgments of district courts.

(3) Transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases. [1998 c 52 § 6; 1995 c 292 § 6; 1984 c 258 § 68; 1983 c 254 § 3; 1975 1st ex.s. c 40 § 1; 1973 c 128 § 2; 1919 c 187 § 11; RRS § 1777-11.]

**Reviser's note:* 1998 c 52 extended the payment period to thirty days in RCW 12.40.105 and subsection (1) of this section, but failed to conform the text of the certification form.

Inclusion of reasonable costs and attorneys' fees in execution: RCW 6.17.110.

Additional notes found at www.leg.wa.gov

12.40.120 Appeals—Setting aside judgments. No appeal shall be permitted from a judgment of the small claims department of the district court where the amount claimed

was less than two hundred fifty dollars. No appeal shall be permitted by a party who requested the exercise of jurisdiction by the small claims department where the amount claimed by that party was less than one thousand dollars. A party in default may seek to have the default judgment set aside according to the court rules applicable to setting aside judgments in district court. [1997 c 352 § 4; 1988 c 85 § 2; 1984 c 258 § 69; 1970 ex.s. c 83 § 4.]

Additional notes found at www.leg.wa.gov

12.40.800 Small claims informational brochure—Preparation and distribution. The administrator for the courts and the district and municipal court judges' association shall prepare a model small claims informational brochure and distribute the model brochure to all small claims departments in the state. This brochure may be modified as necessary by each small claims department and shall be made available to all parties in any small claims action. [1994 c 32 § 7; 1988 c 85 § 3.]

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

- 13.04 Basic juvenile court act.**
- 13.06 Juvenile offenders—Consolidated juvenile services programs.**
- 13.16 Places of detention.**
- 13.20 Management of detention facilities—Counties with populations of one million or more.**
- 13.24 Interstate compact on juveniles.**
- 13.32A Family reconciliation act.**
- 13.34 Juvenile court act—Dependency and termination of parent-child relationship.**
- 13.36 Guardianship.**
- 13.38 Indian child welfare act.**
- 13.40 Juvenile justice act of 1977.**
- 13.50 Keeping and release of records by juvenile justice or care agencies.**
- 13.60 Missing children clearinghouse.**
- 13.64 Emancipation of minors.**
- 13.80 Learning and life skills grant program.**

Action against parent for willful injury to property by minor: RCW 4.24.190.

Age of majority: Chapter 26.28 RCW.

Alcoholic beverage control: Title 66 RCW.

Child

abuse: Chapter 26.44 RCW.

custody, action by nonparent: Chapter 26.10 RCW.

custody or visitation, denial: RCW 26.09.255.

domestic violence prevention: Chapter 26.50 RCW.

labor: Chapters 26.28, 28A.225, 49.12 RCW.

welfare agencies: Chapter 74.15 RCW.

Children and family services: Chapter 74.14A RCW.

Compulsory school attendance: Chapter 28A.225 RCW.

Council for children and families: Chapter 43.121 RCW.

Firearms: RCW 9.41.080, 9.41.240.

Jurisdiction over Indians as to juvenile delinquency and dependent children: Chapter 37.12 RCW.

Juvenile laws and court processes and procedures—Informational materials: RCW 2.56.130.

Leaving children in parked automobile: RCW 9.91.060.

Out-of-home care—Social study required: RCW 74.13.065.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Public institutions, division of children and youth services: Chapter 72.05 RCW.

Report of child abuse: Chapter 26.44 RCW.

State institutions: Title 72 RCW.

Tobacco: RCW 26.28.080.

Vacation and modification of judgments—Causes for enumerated: RCW 4.72.010(5).

Witnesses—Who are disqualified—Privileged communications: RCW 5.60.060.

Youth development and conservation corps: Chapter 79A.05 RCW.

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Chapter 13.04 RCW

BASIC JUVENILE COURT ACT

(Formerly: Juvenile courts)

Sections

- 13.04.005 Short title.
- 13.04.011 Definitions.
- 13.04.021 Juvenile court—How constituted—Cases tried without jury.
- 13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions.
- 13.04.033 Appeal of court order—Procedure—Priority, when.
- 13.04.035 Administrator of juvenile court, probation counselor, and detention services—Appointment.
- 13.04.037 Administrator—Adoption of standards for detention facilities for juveniles—Revision and inspection.
- 13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines.
- 13.04.043 Administrator—Obtaining interpreters.
- 13.04.047 Administrator or staff—Health and dental examination and care—Consent.
- 13.04.050 Expenses of probation officers.
- 13.04.093 Hearings—Duties of prosecuting attorney or attorney general.
- 13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement.
- 13.04.135 Establishment of house or room of detention.
- 13.04.145 Educational program for juveniles in detention facilities.
- 13.04.155 Notification to school principal of conviction, adjudication, or diversion agreement—Provision of information to teachers and other personnel—Confidentiality.
- 13.04.160 Fees not allowed.
- 13.04.180 Board of visitation.
- 13.04.240 Court order not deemed conviction of crime.
- 13.04.300 Juvenile may be both dependent and an offender.
- 13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 RCW.

Division of children and youth services; construed in connection with and supplemental to the juvenile court law: RCW 72.05.170 through 72.05.210.

Educational aid for children with disabilities: Chapter 28A.155 RCW.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

Record of traffic charges of juveniles to be furnished juvenile court: RCW 46.20.293.

Relinquishment of permanent care of child: RCW 26.33.090.

Schools designated close security institutions: RCW 72.05.130.

Temporary assistance for needy families: Chapter 74.12 RCW.

Transfer from minimum security to close security institution—Court order required: RCW 72.05.130(3).

13.04.005 Short title. This chapter shall be known as the "basic juvenile court act". [1977 ex.s. c 291 § 1.]

Additional notes found at www.leg.wa.gov

13.04.011 Definitions. For purposes of this title:
(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW;

(2) Except as specifically provided in RCW 13.40.020 and chapters 13.24 and 13.34 RCW, "juvenile," "youth," and

"child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child. [2011 c 330 § 2; 2010 c 150 § 4; 1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Intent—2011 c 330: "The Washington state legislature has consistently provided national leadership on safe housing and support to foster youth transitioning out of foster care. Since 2006, the legislature has addressed the needs of foster youth aging out of care with medicaid to twenty-one (2007), foster care to twenty-one (2006), the independent youth housing program (2007), and Washington's alignment with the federal fostering connections act (2009). As a result of this national leadership to provide safe and basic housing to youth aging out of foster care, the programs have demonstrated the significant cost-benefit to providing safe housing to our youth exiting foster care.

The United States congress passed the fostering connections to success and increasing adoptions act of 2008 in order to give states another financial tool to continue to provide foster care services to dependent youth who turn eighteen years old while in foster care. However, substantially declining revenues have resulted in markedly decreased funds for states to use to meet the federal requirements necessary to help these youth. Current fiscal realities require that the scope of programs must be narrowed.

The Washington state legislature intends to serve, within the resources available, the maximum number of foster youth who are legally dependent on the state and who reach the age of eighteen while still in foster care. The legislature intends to provide these youth continued foster care services to support basic and healthy transition into adulthood. The legislature recognizes the extremely poor outcomes of unsupported foster youth aging out of the foster care system and is committed to ensuring that those foster youth who engage in positive, age-appropriate activities receive support. It is the intent of the legislature to fully engage in the fostering connections act by providing support, including extended court supervision to foster youth pursuing a high school diploma or GED to age twenty-one with the goal of increasing support to all children up to age twenty-one who are eligible under the federal fostering connections to success act as resources become available." [2011 c 330 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.04.021 Juvenile court—How constituted—Cases tried without jury. (1) The juvenile court shall be a division of the superior court. In judicial districts having more than one judge of the superior court, the judges of such court shall annually assign one or more of their number to the juvenile court division. In any judicial district having a court commissioner, the court commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under this chapter and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050. In any judicial district having a family law commissioner appointed pursuant to chapter 26.12 RCW, the family law commissioner shall have the power, authority, and juris-

dition, concurrent with a juvenile court judge, to hear cases under Title 13 RCW and chapter 28A.225 RCW as provided in RCW 26.12.010, and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050.

(2) Cases in the juvenile court shall be tried without a jury. [1999 c 397 § 5; 1994 sp.s. c 7 § 538; 1988 c 232 § 3; 1979 c 155 § 2; 1977 ex.s. c 291 § 3.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions. (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age. If such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters. The jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of *RCW 13.40.110(1) or (e)(i) of this subsection. Courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in **RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) and (III) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

(III) The prosecutor and respondent may agree to juvenile court jurisdiction and waive application of exclusive adult criminal jurisdiction in (e)(v)(A) through (E) of this subsection and remove the proceeding back to juvenile court with the court's approval.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian

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reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW and parenting plans or residential schedules under chapters 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal. [2009 c 526 § 1; 2009 c 454 § 1. Prior: 2005 c 290 § 1; 2005 c 238 § 1; 2000 c 135 § 2; prior: 1997 c 386 § 17; 1997 c 341 § 3; 1997 c 338 § 7; prior: 1995 c 312 § 39; 1995 c 311 § 15; 1994 sp.s. c 7 § 519; 1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

Reviser's note: *(1) RCW 13.40.110 was amended by 2009 c 454 § 3, changing subsection (1) to subsections (1) and (2).

***(2) RCW 13.04.0301 was decodified September 2003.

(3) This section was amended by 2009 c 454 § 1 and by 2009 c 526 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—1997 c 341: "The legislature finds that a swift and certain response to a juvenile who begins engaging in acts of delinquency may prevent the offender from becoming a chronic or more serious offender. However, given pressing demands to address serious offenders, the system does not always respond to minor offenders expeditiously and effectively. Consequently, this act is adopted to implement an experiment to determine whether granting courts of limited jurisdiction concurrent jurisdiction over certain juvenile offenses will improve the system's effectiveness in curbing delinquency. The legislature may ascertain whether this approach might be successful on a larger scale by conducting an experiment with local governments, which are the laboratories of democracy." [1997 c 341 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Application of 1994 sp.s. c 7 amendments: "Provisions governing exceptions to juvenile court jurisdiction in the amendments to RCW 13.04.030 contained in section 519, chapter 7, Laws of 1994 sp. sess. shall apply to serious violent and violent offenses committed on or after June 13, 1994. The criminal history which may result in loss of juvenile court jurisdiction upon the alleged commission of a serious violent or violent offense may have been acquired on, before, or after June 13, 1994." [1994 sp.s. c 7 § 540.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65).

Additional notes found at www.leg.wa.gov

13.04.033 Appeal of court order—Procedure—Priority, when. (1) Any person aggrieved by a final order of the court may appeal the order as provided by this section. All appeals in matters other than those related to commission of a juvenile offense shall be taken in the same manner as in other civil cases. Except as otherwise provided in this title, all appeals in matters related to the commission of a juvenile offense shall be taken in the same manner as criminal cases and the right to collateral relief shall be the same as in criminal cases. The order of the juvenile court shall stand pending the disposition of the appeal: PROVIDED, That the court or the appellate court may upon application stay the order.

(2) If the final order from which an appeal is taken grants the custody of the child to, or withholds it from, any of the parties, or if the child is committed as provided under this chapter, the appeal shall be given priority in hearing.

(3) In the absence of a specific direction from the party seeking review to file the notice, or the court-appointed guardian ad litem, the court may dismiss the review pursuant to RAP 18.9. To the extent that this enactment [1990 c 284] conflicts with the requirements of RAP 5.3(a) or RAP 5.3(b) this enactment [1990 c 284] shall supersede the conflicting rule. [1990 c 284 § 35; 1979 c 155 § 4; 1977 ex.s. c 291 § 5.]

Rules of court: *Rules of Appellate Procedure.*

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

13.04.035 Administrator of juvenile court, probation counselor, and detention services—Appointment. Juvenile court shall be administered by the superior court, except that by local court rule and agreement with the legislative authority of the county this service may be administered by the legislative authority of the county. Juvenile probation counselor and detention services shall be administered by the superior court, except that (1) by local court rule and agreement with the county legislative authority, these services may be administered by the county legislative authority; (2) if a consortium of three or more counties, located east of the Cascade mountains and whose combined population exceeds five hundred thirty thousand, jointly operates a juvenile correctional facility, the county legislative authorities may prescribe for alternative administration of the juvenile correctional facility by ordinance; and (3) in any county with a population of one million or more, probation and detention services shall be administered in accordance with chapter 13.20 RCW. The administrative body shall appoint an administrator of juvenile court, probation counselor, and detention services who shall be responsible for day-to-day administration of such services, and who may also serve in the capacity of a probation counselor. One person may, pursuant to the agreement of more than one administrative body, serve as administrator of more than one juvenile court. [1996 c 284 § 1; 1991 c 363 § 10; 1979 c 155 § 5; 1977 ex.s. c 291 § 6.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Prosecuting attorney as party to juvenile court proceedings—Exception, procedure: RCW 13.40.090.

Additional notes found at www.leg.wa.gov

13.04.037 Administrator—Adoption of standards for detention facilities for juveniles—Revision and inspection. The administrator shall after consultation with the state planning agency established under Title II of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5611 et seq.) following a public hearing, and after approval of the body responsible for administering the juvenile court, and no later than one hundred eighty days after the effective date of chapter 291, Laws of 1977 ex. sess., adopt standards for the regulation and government of detention facilities for juveniles. Such standards may be revised from time to time, according to the procedure outlined in this section. Each detention facility shall keep a copy of such standards available for inspection at all times. Such standards shall be reviewed and the detention facilities shall be inspected annually by the administrator. [1977 ex.s. c 291 § 7.]

Additional notes found at www.leg.wa.gov

13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines. The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to chapter 13.32A or 13.34 RCW or RCW 13.40.070;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.40.130, and be present at the disposition hearing to respond to questions regarding the predisposition study: PROVIDED, That such duties shall be performed by the department for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and (14) and for the payment of the fines into the county general fund. [2004 c 120 § 10; 1995 c 312 § 40; 1983 c 191 § 14; 1979 c 155 § 6; 1977 ex.s. c 291 § 8; 1959 c 331 § 9; 1951 c 270 § 1; 1921 c 43 § 1; 1913 c 160 § 3; RRS § 1987-3.]

Effective date—2004 c 120: See note following RCW 13.40.010.

Additional notes found at www.leg.wa.gov

13.04.043 Administrator—Obtaining interpreters.

The administrator of juvenile court shall obtain interpreters as needed consistent with the intent and practice of chapter 2.43 RCW, to enable non-English speaking youth and their families to participate in detention, probation, or court proceedings and programs. [1993 c 415 § 6.]

Intent—1993 c 415: See note following RCW 2.56.031.

13.04.047 Administrator or staff—Health and dental examination and care—Consent.

(1) The administrator of the juvenile court or authorized staff may consent as provided in this section to the provision of health and dental examinations and care, and necessary treatment for medical and dental conditions requiring prompt attention, for juveniles lawfully detained at or sentenced to a detention facility. The treatment may include treatment provided at medical or dental facilities outside the juvenile detention facility and treatment provided within the juvenile detention facility for the period of time the youth is in the custody of the facility. Juveniles shall not be transported for treatment outside the facility if treatment services are available within the facility.

(2) The examination, care, and treatment may be provided without parental consent when prompt attention is required if the administrator of the juvenile court or authorized staff have been unable to secure permission for treatment from the parent or parents, guardian, or other person having custody of the child after reasonable attempts to do so before the provision of the medical and dental services.

(3) Treatment shall not be authorized for juveniles whose parent or parents, guardian, or other person having custody of the child informs the administrator of the juvenile court of objections to the treatment before the treatment is provided except where *RCW 69.54.060 applies. [1983 c 267 § 2.]

***Reviser's note:** RCW 69.54.060 was repealed by 1989 c 270 § 35.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

13.04.050 Expenses of probation officers. The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his or her warrant upon the county treasurer for the specified amount of

such expenses. [2010 c 8 § 4001; 1913 c 160 § 4; RRS § 1987-4.]

13.04.093 Hearings—Duties of prosecuting attorney or attorney general. It shall be the duty of the prosecuting attorney to act in proceedings relating to the commission of a juvenile offense as provided in RCW 13.40.070 and 13.40.090 and in proceedings as provided in chapter 71.34 RCW. It shall be the duty of the prosecuting attorney to handle delinquency cases under chapter 13.24 RCW and it shall be the duty of the attorney general to handle dependency cases under chapter 13.24 RCW. It shall be the duty of the attorney general in contested cases brought by the department to present the evidence supporting any petition alleging dependency or seeking the termination of a parent and child relationship or any contested case filed under RCW 26.33.100 or approving or disapproving out-of-home placement: PROVIDED, That in each county with a population of less than two hundred ten thousand, the attorney general may contract with the prosecuting attorney of the county to perform the duties of the attorney general under this section. [1995 c 312 § 41; 1991 c 363 § 11; 1985 c 354 § 30; 1985 c 7 § 4; 1979 ex.s. c 165 § 6; 1977 ex.s. c 291 § 9.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. (1) A juvenile shall not be confined in a jail or holding facility for adults, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

(2) For purposes of this section a juvenile is an individual under the chronological age of eighteen years who has not been transferred previously to adult courts.

(3) The department of social and health services shall monitor and enforce compliance with this section.

(4) This section shall not be construed to expand or limit the authority to lawfully detain juveniles. [1987 c 462 § 1; 1985 c 50 § 1.]

Places of detention: Chapter 13.16 RCW.

Transfer of juvenile to department of corrections facility: RCW 13.40.280.

Additional notes found at www.leg.wa.gov

13.04.135 Establishment of house or room of detention. Counties containing more than fifty thousand inhabitants shall, and counties containing a lesser number of inhabitants may, provide and maintain at public expense, a detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this chapter shall, when necessary, be sheltered.

[1983 c 98 § 2; 1945 c 121 § 1; 1913 c 160 § 13; Rem. Supp. 1945 1987-13. Formerly RCW 13.16.010.]

Detention in facility under jurisdiction of juvenile court—Financial responsibility for cost of detention: RCW 13.34.161, 13.16.085.

13.04.145 Educational program for juveniles in detention facilities. A program of education shall be provided for by the several counties and school districts of the state for common school age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs of education for state residential school residents. For the purposes of this section, the terms "department of social and health services," "residential school" or "schools," and "superintendent or chief administrator of a residential school" as used in RCW 28A.190.030 through 28A.190.060 shall be respectively construed to mean "the several counties of the state," "detention facilities," and "the administrator of juvenile court detention services." Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180. [1990 c 33 § 551; 1983 c 98 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Juvenile facilities, educational programs: RCW 28A.190.010.

13.04.155 Notification to school principal of conviction, adjudication, or diversion agreement—Provision of information to teachers and other personnel—Confidentiality. (1) Whenever a minor enrolled in any common school is convicted in adult criminal court, or adjudicated or entered into a diversion agreement with the juvenile court on any of the following offenses, the court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that such notification will be made:

- (a) A violent offense as defined in RCW 9.94A.030;
- (b) A sex offense as defined in RCW 9.94A.030;
- (c) Inhaling toxic fumes under chapter 9.47A RCW;
- (d) A controlled substances violation under chapter 69.50 RCW;
- (e) A liquor violation under RCW 66.44.270; and
- (f) Any crime under chapters 9.41, 9A.36, 9A.40, 9A.46, and 9A.48 RCW.

(2) The principal must provide the information received under subsection (1) of this section to every teacher of any student who qualifies under subsection (1) of this section and any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record. The principal must provide the information to teachers and other personnel based on any written records that the principal maintains or receives from a juvenile court administrator or a law enforcement agency regarding the student.

(3) Any information received by a principal or school personnel under this section is confidential and may not be further disseminated except as provided in RCW

28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq. [2000 c 27 § 1; 1997 c 266 § 7.]

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

13.04.160 Fees not allowed. No fees shall be charged or collected by any officer or other person for filing petition, serving summons, or other process under this chapter. [1913 c 160 § 16; RRS § 1987-16.]

13.04.180 Board of visitation. In each county, the judge presiding over the juvenile court sessions, as defined in this chapter, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this chapter, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: PROVIDED, The actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the county seat, and no member of the board shall be required to visit any institutions outside the county unless his or her actual traveling expenses shall be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court. [2010 c 8 § 4002; 1913 c 160 § 18; RRS § 1987-18.]

13.04.240 Court order not deemed conviction of crime. An order of court adjudging a child a juvenile offender or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime. [2010 c 150 § 1; 1961 c 302 § 16. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part.]

13.04.300 Juvenile may be both dependent and an offender. Nothing in chapter 13.04, 13.06, 13.32A, 13.34, or 13.40 RCW may be construed to prevent a juvenile from being found both dependent and an offender if there exists a factual basis for such a finding. [1983 c 3 § 15; 1979 c 155 § 14.]

Additional notes found at www.leg.wa.gov

13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 RCW. The provisions of chapters 13.04 and 13.40 RCW, as now or hereafter

amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided. Chapter 10.22 RCW does not apply to juvenile offender proceedings, including diversion, under chapter 13.40 RCW. [1985 c 257 § 5; 1981 c 299 § 20.]

Additional notes found at www.leg.wa.gov

Chapter 13.06 RCW

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES PROGRAMS

(Formerly: Probation services—Special supervision programs)

Sections

- 13.06.010 Intention.
- 13.06.020 State to share in cost.
- 13.06.030 Rules—Standards—"Consolidated juvenile services" defined.
- 13.06.040 Application by county or counties for state financial aid.
- 13.06.050 Conditions for receiving state funds—Criteria for distribution of funds—Annual report on programs to reduce racial disproportionality.

Juvenile may be both dependent and an offender: RCW 13.04.300.

13.06.010 Intention. It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems. [1983 c 191 § 1; 1969 ex.s. c 165 § 1.]

Additional notes found at www.leg.wa.gov

13.06.020 State to share in cost. From any state moneys made available for such purpose, the state of Washington, through the department of social and health services, shall, in accordance with this chapter and applicable departmental rules, share in the cost of providing services to juveniles. [1983 c 191 § 2; 1979 c 141 § 13; 1969 ex.s. c 165 § 2.]

13.06.030 Rules—Standards—"Consolidated juvenile services" defined. The department of social and health services shall adopt rules prescribing minimum standards for the operation of consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. Consolidated juvenile services is a mechanism through which the department of social and health services supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of social and health services shall seek advice from appropriate juvenile justice system participants in developing standards and procedures for the operation of consolidated juvenile services programs and the distribution of funds

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under this chapter. [1983 c 191 § 3; 1979 c 141 § 14; 1969 ex.s. c 165 § 3.]

13.06.040 Application by county or counties for state financial aid. Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department for financial aid for the cost of consolidated juvenile services programs. Any such application must include a plan or plans for providing consolidated services to juvenile offenders in accordance with standards of the department. [1983 c 191 § 4; 1979 c 141 § 15; 1969 ex.s. c 165 § 4.]

13.06.050 Conditions for receiving state funds—Criteria for distribution of funds—Annual report on programs to reduce racial disproportionality. No county shall be entitled to receive any state funds provided by this chapter until its application and plan are approved, and unless and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth in this section. In addition, any county making application for state funds under this chapter that also operates a juvenile detention facility must have standards of operations in place that include: Intake and admissions, medical and health care, communication, correspondence, visiting and telephone use, security and control, sanitation and hygiene, juvenile rights, rules and discipline, property, juvenile records, safety and emergency procedures, programming, release and transfer, training and staff development, and food service.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, rates of poverty, size of racial minority populations, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs.

(3) The secretary, in conjunction with the human rights commission, shall evaluate the effectiveness of programs funded under this chapter in reducing racial disproportionality. The secretary shall investigate whether implementation of such programs has reduced disproportionality in counties with initially high levels of disproportionality. The analysis shall indicate which programs are cost-effective in reducing disproportionality in such areas as alternatives to detention, intake and risk assessment standards pursuant to RCW 13.40.038, alternatives to incarceration, and in the prosecution and adjudication of juveniles. The secretary shall report his or her findings to the legislature by December 1, 1994, and December 1 of each year thereafter. [1993 c 415 § 7; (2010 1st sp.s. c 37 § 910 expired June 30, 2011); 1983 c 191

§ 5; 1979 c 151 § 9; 1977 ex.s. c 307 § 1; 1973 1st ex.s. c 198 § 1; 1971 ex.s. c 165 § 1; 1969 ex.s. c 165 § 5.]

Expiration date—2010 1st sp.s. c 37 § 910: "Section 910 of this act expires June 30, 2011." [2010 1st sp.s. c 37 § 956.]

Effective date—2010 1st sp.s. c 37: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2010]." [2010 1st sp.s. c 37 § 958.]

Intent—1993 c 415: See note following RCW 2.56.031.

Additional notes found at www.leg.wa.gov

Chapter 13.16 RCW PLACES OF DETENTION

Sections

13.16.020	Lack of detention facilities constitutes emergency.
13.16.030	Mandatory function of counties.
13.16.040	Counties authorized to acquire facilities and employ adequate staffs.
13.16.050	Federal or state aid.
13.16.060	Statutory debt limits may be exceeded.
13.16.070	Bonds may be issued without vote of electors.
13.16.080	Allocation of budgeted funds.
13.16.085	Financial responsibility for cost of detention.
13.16.100	Motion pictures.

Child

welfare agencies: Chapter 74.15 RCW.

welfare services: Chapter 74.13 RCW.

County juvenile detention facilities—Policy—Detention and risk assessment standards: RCW 13.40.038.

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

13.16.020 Lack of detention facilities constitutes emergency. The attention of the legislature having been called to the absence of juvenile detention facilities in the various counties of the state, the legislature hereby declares that this situation constitutes an emergency demanding the invocation by the several counties affected of the emergency powers granted by virtue of RCW 36.40.140 through 36.40.200. [1945 c 188 § 1; Rem. Supp. 1945 § 2004-1.]

13.16.030 Mandatory function of counties. The construction, acquisition and maintenance of juvenile detention facilities for dependent, wayward and delinquent children, separate and apart from the detention facilities for adults, is hereby declared to be a mandatory function of the several counties of the state. [1945 c 188 § 2; Rem. Supp. 1945 § 2004-2.]

13.16.040 Counties authorized to acquire facilities and employ adequate staffs. Boards of county commissioners in the various counties now suffering from a lack of adequate detention facilities for dependent, delinquent and wayward children shall, in the manner provided by law, declare an emergency and appropriate, in the manner provided by law, sufficient funds to meet all demands for adequate care of dependent, delinquent and wayward children. All appropriations made under the provisions of RCW 13.16.020 through 13.16.080 are to be used exclusively for the acquisition, purchase, construction or leasing of real and personal property and the employment and payment of salaries for an adequate staff of juvenile officers and necessary clerical staff and assistants and for furnishing suitable food, clothing and rec-

reational facilities for dependent, delinquent and wayward children. [1945 c 188 § 3; Rem. Supp. 1945 § 2004-3.]

13.16.050 Federal or state aid. In connection with the financing of facilities and the employment of a staff of juvenile officers for dependent, delinquent and wayward children, the various boards of county commissioners affected shall attempt to secure such advances, loans, grants in aid, donations as gifts as may be secured from the federal government or any of its agencies or from the state government or from other public or private institutions or individuals. [1945 c 188 § 4; Rem. Supp. 1945 § 2004-4.]

13.16.060 Statutory debt limits may be exceeded. Appropriations made under authority and by virtue of RCW 13.16.020 through 13.16.080 and debts incurred by any county in carrying out the provisions of RCW 13.16.020 through 13.16.080 may exceed all statutory limitations otherwise applicable and limiting the debt any county may incur. [1945 c 188 § 5; Rem. Supp. 1945 § 2004-5.]

13.16.070 Bonds may be issued without vote of electors. In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the several counties affected shall utilize any and all methods available to them by law for financing the program authorized by RCW 13.16.020 through 13.16.080 and may fund any and all debts incurred by the issuance of general obligation bonds of the county in the manner provided by law, without submitting the same to a vote of the people. [1945 c 188 § 6; Rem. Supp. 1945 § 2004-6.]

13.16.080 Allocation of budgeted funds. In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the board of county commissioners is hereby authorized, any law to the contrary notwithstanding, to allocate any funds that may be available in any item or class of the budget as presently constituted to the fund to be used to carry out the provisions of RCW 13.16.020 through 13.16.080. [1945 c 188 § 7; Rem. Supp. 1945 § 2004-7.]

13.16.085 Financial responsibility for cost of detention. In any case in which a child under eighteen years of age has been placed in any detention facility under the jurisdiction of the juvenile court, the court may inquire into the facts concerning the necessity or propriety of such child's detention notwithstanding the fact that such child may not have been found to be either a dependent or a delinquent child.

The court may, either in the proceedings involving the question of dependency or delinquency of such child or in a separate proceeding, upon the parent or parents, guardian, or other person having custody of said child being duly summoned or voluntarily appearing, proceed to inquire into the necessity or propriety of such detention and into the ability of such person or persons to pay the cost of such detention.

If the court finds that such detention was necessary or proper for the welfare of the child or for the protection of the community, and if the court also finds the parent or parents, guardian, or other person having the custody of such child able to pay or contribute to the payment of the cost of such detention, the court may enter such order or decree as shall be

equitable in the premises, and may enforce the same by execution or in any way a court of equity may enforce its decrees. [1955 c 369 § 1.]

Basic juvenile court act: Chapter 13.04 RCW.

13.16.100 Motion pictures. Motion pictures unrated after November 1968 or rated R, X, or NC-17 by the motion picture association of America shall not be shown in juvenile detention facilities or facilities operated by the division of juvenile rehabilitation in the department of social and health services. [1994 sp.s. c 7 § 807.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Chapter 13.20 RCW

MANAGEMENT OF DETENTION FACILITIES— COUNTIES WITH POPULATIONS OF ONE MILLION OR MORE

(Formerly: Management of detention facilities—Class AA counties)

Sections

13.20.010	Board of managers—Appointment authorized—Composition.
13.20.020	Terms of office—Removal—Vacancies.
13.20.030	Chair—Quorum—Organization—Rules of procedure.
13.20.040	Powers and duties of board.
13.20.050	Compensation of members.
13.20.060	Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure.

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

Places of detention: Chapter 13.16 RCW.

Places of detention—Basic juvenile court act: Chapter 13.04 RCW.

13.20.010 Board of managers—Appointment authorized—Composition. The judges of the superior court of any county with a population of one million or more are hereby authorized, by majority vote, to appoint a board of managers to administer, subject to the approval and authority of such superior court, the probation and detention services for dependent and delinquent children coming under the jurisdiction of the juvenile court.

Such board shall consist of four citizens of the county and the judge who has been selected to preside over the juvenile court. [1991 c 363 § 12; 1955 c 232 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

13.20.020 Terms of office—Removal—Vacancies. The nonjudicial members of the board first appointed shall be appointed for the respective terms of one, two, three, and four years and until their successors are appointed and qualified; and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified.

Any such member of the board may be removed at any time by majority vote of the judges of the superior court.

Vacancies on the board may be filled at any time by majority vote of said judges, and such appointee shall hold office for the remainder of the term of the member in whose stead he or she was appointed. [2010 c 8 § 4003; 1955 c 232 § 2.]

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13.20.030 Chair—Quorum—Organization—Rules of procedure. The judicial member of the board shall be the chair thereof; a majority thereof shall constitute a quorum for the transaction of business; and the board shall have authority to organize itself in such manner and to establish such rules of procedure as it deems proper for the performance of its duties. [2010 c 8 § 4004; 1955 c 232 § 3.]

13.20.040 Powers and duties of board. The juvenile court board of managers shall:

(1) Have general supervision and care of all physical structures and grounds connected with the rendition of probation and detention services and power to do everything necessary to the proper maintenance thereof within the limits of the appropriations authorized.

(2) Subject to the approval and authority of said superior court, the board of managers shall have authority and power to determine the type and extent of probation and detention services to be conducted in connection with the juvenile court, and authority over all matters concerning employment, job classifications, salary scales, qualifications, and number of personnel necessarily involved in the rendition of probation and detention services.

(3) Prepare, in accordance with the provisions of the county budget law, and file with the county auditor a detailed and itemized estimate, both of probable revenues from sources other than taxation and of all expenditures required for the rendition of the services under the jurisdiction of said board.

(4) Prepare and file with the superior court on July 1st of each year, and at such other times and in such form as the court shall require, a report of its operations. [1955 c 232 § 4.]

13.20.050 Compensation of members. No member of the board shall receive any compensation or emolument whatever for services as such board member. [1955 c 232 § 5.]

13.20.060 Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure. In addition, and alternatively, to the authority granted by RCW 13.20.010, the judges of the superior court of any county with a population of one million or more operating under a county charter providing for an elected county executive are hereby authorized, by a majority vote, subject to approval by ordinance of the legislative authority of the county to transfer to the county executive the responsibility for, and administration of all or part of juvenile court services, including detention, intake and probation. The superior court and county executive of such county are further authorized to establish a five-member juvenile court advisory board to advise the county in its administration of such services, facilities and programs. If the advisory board is established, two members of the advisory board shall be appointed by the superior court, two members shall be appointed by the county executive, and one member shall be selected by the vote of the other four members. The county is authorized to contract or otherwise make arrangements with other public or private agencies to provide all or a part of such services, facilities and programs. Subsequent to any transfer

to the county of responsibility and administration of such services, facilities and programs pursuant to the foregoing authority, the judges of such superior court, by majority vote subject to the approval by ordinance of the legislative authority of the county, may retransfer the same to the superior court. [1991 c 363 § 13; 1975 1st ex.s. c 124 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 13.24 RCW

INTERSTATE COMPACT FOR JUVENILES

Sections

13.24.011	Execution of compact.
13.24.021	Designation of state council.
13.24.030	Supplementary agreements.
13.24.035	Governor authorized and directed to execute supplementary compact—Contents.
13.24.040	Financial arrangements.
13.24.050	Fees.
13.24.060	Responsibilities of state departments, agencies and officers.
13.24.900	Short title.

13.24.011 Execution of compact.

EXECUTION OF THE COMPACT

The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows. No provision of this compact will interfere with this state's authority to determine policy regarding juvenile offenders and nonoffenders within this state.

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I - Purpose

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to: (1) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (3) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return; (4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (5) provide for the

effective tracking and supervision of juveniles; (6) equitably allocate the costs, benefits, and obligations of the compacting states; (7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders; (8) ensure immediate notice to jurisdictions where defined offenders may travel or relocate across state lines; (9) establish procedures to resolve pending charges (detainers) against juvenile offenders before transfer or release to the community under the terms of this compact; (10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (13) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the interstate commission created in this section are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II - Definitions

As used in this compact, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed under Article III of this compact.

(3) "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator under the terms of this compact responsible for the administration and management

of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(7) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(a) An accused delinquent, meaning a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) An adjudicated delinquent, meaning a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(c) An accused status offender, meaning a person charged with an offense that would not be a criminal offense if committed by an adult;

(d) An adjudicated status offender, meaning a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(e) A nonoffender, meaning a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(9) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the interstate commission issued under Article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state. This includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III - Interstate Commission for Juveniles

(1) The compacting states hereby create the "interstate commission for juveniles." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth in this section, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state under the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in such capacity under the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be nonvoting members. The interstate commission may provide in its bylaws for such additional nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

(4) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(5) The interstate commission shall meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(6) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff, administer enforcement and compliance with the compact, its bylaws, and rules, and perform such other duties as directed by the interstate commission or set forth in the bylaws.

(7) Each member of the interstate commission may cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to

the public where it determines by two-thirds vote that an open meeting would be likely to:

- (a) Relate solely to the interstate commission's internal personnel practices and procedures;
 - (b) Disclose matters specifically exempted from disclosure by statute;
 - (c) Disclose trade secrets or commercial or financial information that is privileged or confidential;
 - (d) Involve accusing any person of a crime, or formally censuring any person;
 - (e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (f) Disclose investigative records compiled for law enforcement purposes;
 - (g) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
 - (h) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
 - (i) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
- (10) For every closed meeting, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes.
- (11) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules that specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to current technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV - Powers and Duties of the Interstate Commission

The commission has the following powers and duties:

- (1) Provide for dispute resolution among compacting states;
- (2) Adopt rules to effect the purposes and obligations of this compact which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (3) Oversee, supervise, and coordinate the interstate movement of juveniles subject to this compact and any bylaws adopted and rules adopted by the interstate commission;

- (4) Enforce compliance with the compact provisions, the rules adopted by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
- (5) Establish and maintain offices that are located within one or more of the compacting states;
- (6) Purchase and maintain insurance and bonds;
- (7) Borrow, accept, hire, or contract for personnel services;
- (8) Establish and appoint committees and hire staff that it deems necessary to carry out its functions including, but not limited to, an executive committee as required by Article III of this compact that may act on behalf of the interstate commission in carrying out its powers and duties;
- (9) Elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications, and to establish the interstate commission's personnel policies and programs relating to inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) Accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of the donations and grants;
- (11) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) Establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
- (14) Sue and be sued;
- (15) Adopt a seal and bylaws governing the management and operation of the interstate commission;
- (16) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
- (17) Report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Reports shall also include any recommendations adopted by the interstate commission;
- (18) Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;
- (19) Establish uniform standards of the reporting, collecting, and exchanging of data; and
- (20) Maintain its corporate books and records in accordance with the bylaws.

ARTICLE V - Organization and Operation of the Interstate Commission

Section A. Bylaws

The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- (1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary;

(3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;

(4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers of the interstate commission;

(6) Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing "start-up" rules for initial administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and staff

(1) The interstate commission shall, by a majority of the members, elect annually from among its members a chair and a vice chair, each of whom has the authority and duties that are specified in the bylaws. The chair or, in the chair's absence or disability, the vice chair shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission deems appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise such other staff as authorized by the interstate commission.

Section C. Qualified immunity, defense, and indemnification

(1) The commission's executive director and employees are immune from suit and liability, either personally or in their official capacity, for any claim for damage to, loss of property, personal injury, or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, any such person is not protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person

from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI - Rule-making Functions of the Interstate Commission

(1) The interstate commission shall adopt and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the "model state administrative procedures act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States supreme court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(3) When adopting a rule, the interstate commission shall, at a minimum:

(a) Publish the proposed rule's entire text stating the reason or reasons for that proposed rule;

(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;

(c) Provide an opportunity for an informal hearing if petitioned by ten or more persons; and

(d) Adopt a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(4) The interstate commission shall allow, not later than sixty days after a rule is adopted, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the model state administrative procedures act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that rule to have no further force and effect in any compacting state.

(6) The existing rules governing the operation of the interstate compact on juveniles superseded by chapter 180, Laws of 2003 shall be null and void twelve months after the first meeting of the interstate commission created under this section.

(7) Upon determination by the interstate commission that a state of emergency exists, it may adopt an emergency rule that becomes effective immediately upon adoption. However, the usual rule-making procedures shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII - Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

Section A. Oversight

(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted under this section shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute resolution

(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and non-compacting states. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII - Finance

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall adopt a rule binding upon all compacting states that governs the assessment.

(3) The interstate commission shall not incur any obligations of any kind before securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE IX - The State Council

Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

Pursuant to this compact, the governor shall designate an individual who shall be the compact administrator and who, acting jointly with like officers of other party states, shall

promulgate rules and regulations to carry out more effectively the terms of the compact. The governor shall designate the compact administrator from a list of six individuals, three of whom are recommended by the Washington association of juvenile court administrators and three of whom are recommended by the juvenile rehabilitation administration of the department of social and health services. The administrator shall serve subject to the pleasure of the governor. The administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state.

ARTICLE X - Compacting States, Effective Date, and Amendment

(1) Any state, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis before adoption of the compact by all states and territories of the United States.

(3) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI - Withdrawal, Default, Termination, and Judicial Enforcement

Section A. Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination, and Default

(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or adopted rules, the interstate commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the interstate commission;

(b) Alternative dispute resolution;

(c) Fines, fees, and costs in such amounts as set by the interstate commission; and

(d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial enforcement

The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its rules, and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

Section D. Dissolution of compact

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII - Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII - Binding Effect of Compact and Other Laws

Section A. Other laws

(1) Nothing in this section prevents the enforcement of any other law of a compacting state that is consistent with this compact.

(2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding effect of the compact

(1) All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated

by law in effect at the time this compact becomes effective. [2003 c 180 § 1.]

Contingent effective date—2003 c 180: "This act takes effect July 1, 2004, or when the interstate compact for juveniles is adopted by thirty-five or more states, whichever occurs later." [2003 c 180 § 4.] Illinois was the 35th state to adopt the interstate compact for juveniles on August 26, 2008.

13.24.021 Designation of state council. Pursuant to the compact created in RCW 13.24.011, the governor is hereby authorized and empowered to designate a state council as required in Article IX of the compact. [2003 c 180 § 2.]

Contingent effective date—2003 c 180: See note following RCW 13.24.011.

13.24.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1955 c 284 § 3.]

13.24.035 Governor authorized and directed to execute supplementary compact—Contents. (1) The governor is hereby authorized and directed to execute a compact amending and supplementing the interstate compact on juveniles on behalf of this state with any other state or states legally joining therein in the form substantially as set forth in subsection (2) of this section.

(2)(a) All provisions and procedures of Articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

(b) This amendment provides additional remedies and shall be binding only as among and between those party states which substantially execute the same. [1979 c 155 § 36.]

Additional notes found at www.leg.wa.gov

13.24.040 Financial arrangements. The compact administrator, subject to the approval of the office of financial management, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1979 ex.s. c 86 § 1; 1955 c 284 § 4.]

Additional notes found at www.leg.wa.gov

13.24.050 Fees. Any judge of this state who appoints counsel or guardian ad litem pursuant to the provision of the compact may, in his or her discretion, fix a fee to be paid out of funds available for disposition by the court but no such fee shall exceed twenty-five dollars. [2010 c 8 § 4005; 1955 c 284 § 5.]

13.24.060 Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. [1955 c 284 § 6.]

13.24.900 Short title. This chapter may be cited as the "uniform interstate compact on juveniles." [1955 c 284 § 7.]

Chapter 13.32A RCW

FAMILY RECONCILIATION ACT

(Formerly: Procedures for families in conflict)

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Implementation of chapters 13.32A and 13.34 RCW: RCW 74.13.036.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Services for families-in-conflict: RCW 74.14A.020.

Transitional treatment program for gang and drug-involved juvenile offenders: RCW 13.40.310.

13.32A.010 Legislative findings and intent. The legislature finds that within any group of people there exists a need for guidelines for acceptable behavior and that, presumptively, the experience and maturity of parents make them better qualified to establish guidelines beneficial to and protective of their children. The legislature further finds that it is the right and responsibility of adults to establish laws for the benefit and protection of the society; and that, in the same manner, the right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit. Further, absent abuse or neglect, parents have the right to exercise control over their children. The legislature reaffirms its position stated in RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that it should remain intact in the absence of compelling evidence to the contrary.

The legislature recognizes there is a need for services and assistance for parents and children who are in conflict. These conflicts are manifested by children who exhibit various behaviors including: Running away, substance abuse, serious acting out problems, mental health needs, and other behaviors that endanger themselves or others.

The legislature finds many parents do not know their rights regarding their adolescent children and law enforcement. Parents and courts feel they have insufficient legal

recourse for the chronic runaway child who is endangering himself or herself through his or her behavior. The legislature further recognizes that for chronic runaways whose behavior puts them in serious danger of harming themselves or others, secure facilities must be provided to allow opportunities for assessment, treatment, and to assist parents and protect their children. The legislature intends to give tools to parents, courts, and law enforcement to keep families together and reunite them whenever possible.

The legislature recognizes that some children run away to protect themselves from abuse or neglect in their homes. Abused and neglected children should be dealt with pursuant to chapter 13.34 RCW and it is not the intent of the legislature to handle dependency matters under this chapter.

The legislature intends services offered under this chapter be on a voluntary basis whenever possible to children and their families and that the courts be used as a last resort.

The legislature intends to increase the safety of children through the preservation of families and the provision of assessment, treatment, and placement services for children in need of services and at-risk youth including services and assessments conducted under chapter 13.32A RCW and RCW 74.13.033. Within available funds, the legislature intends to provide these services through crisis residential centers in which children and youth may safely reside for a limited period of time. The time in residence shall be used to conduct an assessment of the needs of the children, youth, and their families. The assessments are necessary to identify appropriate services and placement options that will reduce the likelihood that children will place themselves in dangerous or life-threatening situations.

The legislature recognizes that crisis residential centers provide an opportunity for children to receive short-term necessary support and nurturing in cases where there may be abuse or neglect. The legislature intends that center staff provide an atmosphere of concern, care, and respect for children in the center and their parents.

The legislature intends to provide for the protection of children who, through their behavior, are endangering themselves. The legislature intends to provide appropriate residential services, including secure facilities, to protect, stabilize, and treat children with serious problems. The legislature further intends to empower parents by providing them with the assistance they require to raise their children. [2000 c 123 § 1; 1995 c 312 § 1; 1979 c 155 § 15.]

Additional notes found at www.leg.wa.gov

13.32A.015 At-risk youth services—Intent. It is the intent of the legislature to:

- (1) Preserve, strengthen, and reconcile families experiencing problems with at-risk youth;
- (2) Provide a legal process by which parents who are experiencing problems with at-risk youth can request and receive assistance from juvenile courts in providing appropriate care, treatment, and supervision to such youth; and
- (3) Assess the effectiveness of the family reconciliation services program.

The legislature does not intend by this enactment to grant any parent the right to file an at-risk youth petition or receive juvenile court assistance in dealing with an at-risk youth. The purpose of chapter 276, Laws of 1990 is to create a process

by which a parent of an at-risk youth may request and receive assistance subject to the availability of juvenile court services and resources. Recognizing that these services and resources are limited, the legislature intends that counties have the authority to impose reasonable limits on the utilization of juvenile court services and resources in matters related to at-risk youth. Any responsibilities imposed upon the department under chapter 276, Laws of 1990 shall be contingent upon the availability of funds specifically appropriated by the legislature for such purpose. [1990 c 276 § 1.]

13.32A.020 Short title. This chapter shall be known and may be cited as the family reconciliation act. [1990 c 276 § 2; 1979 c 155 § 16.]

Additional notes found at www.leg.wa.gov

13.32A.030 Definitions—Regulating leave from semi-secure facility. As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

(3) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

(4) "Child," "juvenile," and "youth" mean any unemancipated individual who is under the chronological age of eighteen years.

(5) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person;

(c)(i) Who is in need of: (A) Necessary services, including food, shelter, health care, clothing, or education; or (B) services designed to maintain or reunite the family;

(ii) Who lacks access to, or has declined to utilize, these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure; or

(d) Who is a "sexually exploited child".

(6) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.

(7) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

(8) "Custodian" means the person or entity who has the legal right to the custody of the child.

(9) "Department" means the department of social and health services.

(10) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

(11) "Guardian" means that person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the right to legal custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

(12) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team shall include the parent, a department caseworker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members shall be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer chooses to provide compensation or the member is a state employee.

(13) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.

(15) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(16) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at

all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(17) "Sexually exploited child" means any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(18) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department with a ratio of at least one adult staff member to every two children.

(19) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered by the court at a fact-finding hearing on a child in need of services petition. [2010 c 289 § 1; 2000 c 123 § 2; 1997 c 146 § 1; 1996 c 133 § 9; 1995 c 312 § 3; 1990 c 276 § 3; 1985 c 257 § 6; 1979 c 155 § 17.]

Effective date—2010 c 289: "Section 1 of this act takes effect July 1, 2011." [2010 c 289 § 2.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.040 Family reconciliation services. Families who are in conflict or who are experiencing problems with at-risk youth or a child who may be in need of services may request family reconciliation services from the department. The department may involve a local multidisciplinary team in its response in determining the services to be provided and in providing those services. Such services shall be provided to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the child or family and to maintain families intact wherever possible. Family reconciliation services shall be designed to develop skills and supports within families to resolve problems related to at-risk youth, children in need of services, or family conflicts. These services may include but are not limited to referral to services for suicide prevention, psychiatric or other medical care, or psychological, mental health, drug or alcohol treatment, welfare, legal, educational, or other social services, as appropriate to the needs of the child and the family, and training in parenting, conflict management, and dispute resolution skills. [2000 c 123 § 3; 1995 c 312 § 5; 1994 c 304 § 3; 1990 c 276 § 4; 1981 c 298 § 1; 1979 c 155 § 18.]

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.042 Multidisciplinary team—Formation.

(1)(a) The administrator of a crisis residential center may convene a multidisciplinary team, which is to be locally based and administered, at the request of a child placed at the center or the child's parent.

(b) If the administrator has reasonable cause to believe that a child is a child in need of services and the parent is

unavailable or unwilling to continue efforts to maintain the family structure, the administrator shall immediately convene a multidisciplinary team.

(c) A parent may disband a team twenty-four hours, excluding weekends and holidays, after receiving notice of formation of the team under (b) of this subsection unless a petition has been filed under RCW 13.32A.140. If a petition has been filed the parent may not disband the team until the hearing is held under RCW 13.32A.179. The court may allow the team to continue if an out-of-home placement is ordered under RCW 13.32A.179(3). Upon the filing of an at-risk youth or dependency petition the team shall cease to exist, unless the parent requests continuation of the team or unless the out-of-home placement was ordered under RCW 13.32A.179(3).

(2) The secretary shall request participation of appropriate state agencies to assist in the coordination and delivery of services through the multidisciplinary teams. Those agencies that agree to participate shall provide the secretary all information necessary to facilitate forming a multidisciplinary team and the secretary shall provide this information to the administrator of each crisis residential center.

(3) The secretary shall designate within each region a department employee who shall have responsibility for coordination of the state response to a request for creation of a multidisciplinary team. The secretary shall advise the administrator of each crisis residential center of the name of the appropriate employee. Upon a request of the administrator to form a multidisciplinary team the employee shall provide a list of the agencies that have agreed to participate in the multidisciplinary team.

(4) The administrator shall also seek participation from representatives of mental health and drug and alcohol treatment providers as appropriate.

(5) A parent shall be advised of the request to form a multidisciplinary team and may select additional members of the multidisciplinary team. The parent or child may request any person or persons to participate including, but not limited to, educators, law enforcement personnel, court personnel, family therapists, licensed health care practitioners, social service providers, youth residential placement providers, other family members, church representatives, and members of their own community. The administrator shall assist in obtaining the prompt participation of persons requested by the parent or child.

(6) When an administrator of a crisis residential center requests the formation of a team, the state agencies must respond as soon as possible. [2000 c 123 § 4; 1995 c 312 § 13.]

Additional notes found at www.leg.wa.gov

13.32A.044 Multidisciplinary team—Purpose—Authority. (1) The purpose of the multidisciplinary team is to assist in a coordinated referral of the family to available social and health-related services.

(2) The team shall have the authority to evaluate the juvenile, and family members, if appropriate and agreed to by the parent, and shall:

(a) With parental input, develop a plan of appropriate available services and assist the family in obtaining those services;

(b) Make a referral to the designated chemical dependency specialist or the county designated mental health professional, if appropriate;

(c) Recommend no further intervention because the juvenile and his or her family have resolved the problem causing the family conflict; or

(d) With the parent's consent, work with them to achieve reconciliation of the child and family.

(3) At the first meeting of the multidisciplinary team, it shall choose a member to coordinate the team's efforts. The parent member of the multidisciplinary team must agree with the choice of coordinator. The team shall meet or communicate as often as necessary to assist the family.

(4) The coordinator of the multidisciplinary team may assist in filing a child in need of services petition when requested by the parent or child or an at-risk youth petition when requested by the parent. The multidisciplinary team shall have no standing as a party in any action under this title.

(5) If the administrator is unable to contact the child's parent, the multidisciplinary team may be used for assistance. If the parent has not been contacted within five days the administrator shall contact the department and request the case be reviewed for a dependency filing under chapter 13.34 RCW. [2000 c 123 § 5; 1995 c 312 § 14.]

Additional notes found at www.leg.wa.gov

13.32A.050 Officer taking child into custody—When authorized—Maximum time of custody—Transporting to crisis residential center—Report on suspected abuse or neglect. (1) A law enforcement officer shall take a child into custody:

(a) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(b) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance; or

(c) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(d) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued under this chapter or chapter 13.34 RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter or chapter 13.34 RCW.

(2) Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination. Law enforcement custody continues until the law enforcement officer transfers custody to a person, agency, or other authorized entity under this chapter, or releases the child because no placement is available. Transfer of custody is not complete unless the person, agency, or entity to whom the child is released agrees to accept custody.

(3) If a law enforcement officer takes a child into custody pursuant to either subsection (1)(a) or (b) of this section and transports the child to a crisis residential center, the officer shall, within twenty-four hours of delivering the child

to the center, provide to the center a written report detailing the reasons the officer took the child into custody. The center shall provide the department with a copy of the officer's report.

(4) If the law enforcement officer who initially takes the juvenile into custody or the staff of the crisis residential center have reasonable cause to believe that the child is absent from home because he or she is abused or neglected, a report shall be made immediately to the department.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law.

(6) If a law enforcement officer has a reasonable suspicion that a child is being unlawfully harbored in violation of RCW 13.32A.080, the officer shall remove the child from the custody of the person harboring the child and shall transport the child to one of the locations specified in RCW 13.32A.060.

(7) No child may be placed in a secure facility except as provided in this chapter. [2000 c 123 § 6; 1997 c 146 § 2; 1996 c 133 § 10; 1995 c 312 § 6; 1994 sp.s. c 7 § 505; 1990 c 276 § 5; 1986 c 288 § 1; 1985 c 257 § 7; 1981 c 298 § 2; 1979 c 155 § 19.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.060 Officer taking child into custody—Procedure—Transporting to home, crisis residential center, custody of department, or juvenile detention facility. (1) An officer taking a child into custody under RCW 13.32A.050(1) (a) or (b) shall inform the child of the reason for such custody and shall:

(a) Transport the child to his or her home or to a parent at his or her place of employment, if no parent is at home. The parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential center's secure facility or a center's semi-secure facility if a secure facility is full, not available, or not located within a reasonable distance if:

(i) The child expresses fear or distress at the prospect of being returned to his or her home which leads the officer to believe there is a possibility that the child is experiencing some type of abuse or neglect;

(ii) It is not practical to transport the child to his or her home or place of the parent's employment; or

(iii) There is no parent available to accept custody of the child; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, request the department to accept custody of the child. If the department determines that an appropriate placement is currently available, the department shall accept custody and place the child in an out-of-home placement. Upon accepting custody of a child from the officer, the department may place the child in an out-of-home placement for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, without filing a child in need of services petition, obtaining parental consent, or obtaining an order for placement under chapter 13.34 RCW. Upon transferring a child to the department's custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody. If the department declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; or a licensed youth shelter. The officer shall immediately notify the department if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 13.32A.050(1) (c) or (d) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 13.32A.050(1)(c) may release the child to the supervising agency, or shall take the child to a designated crisis residential center's secure facility. If the secure facility is not available, not located within a reasonable distance, or full, the officer shall take the child to a semi-secure crisis residential center. An officer taking a child into custody under RCW 13.32A.050(1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility, except that the child shall be taken to detention whenever the officer has been notified that a juvenile court has entered a detention order under this chapter or chapter 13.34 RCW.

(3) Every officer taking a child into custody shall provide the child and his or her parent or parents or responsible adult with a copy of the statement specified in RCW 13.32A.130(6).

(4) Whenever an officer transfers custody of a child to a crisis residential center or the department, the child may reside in the crisis residential center or may be placed by the department in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and holidays. Thereafter, the child may continue in out-of-home placement only if the parents have consented, a child in need of services petition has been filed, or an order for placement has been entered under chapter 13.34 RCW.

(5) The department shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within centers in their jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken. [2000 c 162 § 11; 2000 c 162 § 1; 2000 c 123 § 7; 1997 c 146 § 3; 1996 c 133 § 11; 1995 c 312 § 7; 1994 sp.s. c 7 § 506; 1985 c 257 § 8; 1981 c 298 § 3; 1979 c 155 § 20.]

Reviser's note: This section was amended by 2000 c 123 § 7 and by 2000 c 162 § 11, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.32A.065 Officer taking child into custody—Placing in detention—Detention review hearing—Hearing on contempt (as amended by 2000 c 123). (1) ~~((A child may be placed in detention after being taken into custody pursuant to RCW 13.32A.050(1)(d)-))~~ If a child is placed in detention under RCW 13.32A.050(1)(d), the court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court orders the child to remain in detention, the court shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. [2000 c 123 § 8; 1996 c 133 § 12; 1981 c 298 § 4.]

13.32A.065 Officer taking child into custody—Placing in detention—Detention review hearing—Hearing on contempt (as amended by 2000 c 162). (1) A child may be placed in ~~((either (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b)))~~ detention after being taken into custody pursuant to RCW 13.32A.050(1)(d). ~~((In no case may a child in contempt be confined in a secure facility that is freestanding outside a juvenile detention facility-))~~ The court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court ~~((finds that the conditions in subsection (1)(a) and (b) of this section have been met))~~ orders the child to remain in detention, the court ~~((may order the child to remain confined either in (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b) detention; and))~~ shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. ~~((In no case may a child in contempt be confined in a secure facility that is freestanding outside a juvenile detention facility-))~~ [2000 c 162 § 12; 2000 c 162 § 2; 1996 c 133 § 12; 1981 c 298 § 4.]

Reviser's note: RCW 13.32A.065 was amended by 2000 c 123 § 8 without cognizance of its amendment by 2000 c 162 §§ 2 and 12. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.070 Immunity from liability for law enforcement officer and person with whom child is placed. (1) A law enforcement officer acting in good faith pursuant to this chapter is immune from civil or criminal liability for such action.

(2) A person with whom a child is placed pursuant to this chapter and who acts reasonably and in good faith is immune from civil or criminal liability for the act of receiving the child. The immunity does not release the person from liability under any other law. [1996 c 133 § 13; 1995 c 312 § 8; 1986 c 288 § 2; 1981 c 298 § 5; 1979 c 155 § 21.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.080 Unlawful harboring of a minor—Penalty—Defense—Prosecution of adult for involving child in commission of offense. (1)(a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Unlawful harboring of a minor is punishable as a gross misdemeanor.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

(a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;

(b) Promoting prostitution as defined in chapter 9A.88 RCW; and

(c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020. [2000 c 123 § 9; 1994 sp.s. c 7 § 507; 1981 c 298 § 6; 1979 c 155 § 22.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department.

(1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home without the permission of the parent, or other lawfully prescribed residence, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.

The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family. [2011 c 151 § 1; 2010 c 229 § 2; 2000 c 123 § 10; 1996 c 133 § 14; 1995 c 312 § 34.]

Effective date—2011 c 151 § 1: "Section 1 of this act takes effect July 1, 2012." [2011 c 151 § 2.]

Findings—2010 c 229: "The legislature finds that youth services provide safety to youth on the streets and are a critical pathway to ensuring the youth's return home. Runaway youth are without protection, live under the threat of violence, and fall victim to predators who exploit their vulnerability. The policy of this state is to provide assistance to youth in crisis and to protect and preserve families. In order to effectively serve youth on the streets and promote their safe return home, shelters must have the time to establish and maintain an environment that facilitates open communication and trust.

The legislature also finds that parents of runaway youth have an interest in knowing their sons and daughters are safe in a shelter, rather than on the streets without protection. The legislature further finds that law enforcement and the department can notify a parent that the youth is safe, without disclosing the youth's location or compromising the ability of youth services providers to effectively assist youth in crisis." [2010 c 229 § 1.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.084 Providing shelter to minor—Immunity from liability. If a person provides the notice required in RCW 13.32A.082, he or she is immune from liability for any cause of action arising from providing shelter to the child. The immunity shall not extend to acts of intentional misconduct or gross negligence by the person providing the shelter. [1995 c 312 § 36.]

Additional notes found at www.leg.wa.gov

13.32A.085 Unlicensed youth shelter or unlicensed runaway and homeless youth program—Private right of action or claim. A private right of action or claim on the part of a parent is created against an unlicensed youth shelter or unlicensed runaway and homeless youth program who fails to meet the notification requirements in *RCW 13.32A.082(1)(a). [2010 c 229 § 3.]

***Reviser's note:** RCW 13.32A.082 was amended by 2011 c 151 § 1, deleting subsection (1)(a).

Findings—2010 c 229: See note following RCW 13.32A.082.

13.32A.086 Duty of law enforcement agencies to identify runaway children under RCW 43.43.510. Whenever a law enforcement agency receives a report from a parent that his or her child, or child over whom the parent has custody, has without permission of the parent left the home or residence lawfully prescribed for the child under circumstances where the parent believes that the child has run away from the home or the residence, the agency shall provide for placing information identifying the child in files under RCW 43.43.510. [1995 c 312 § 37.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

13.32A.090 Duty to inform parents—Transportation to child's home or out-of-home placement—Notice to department. (1) The administrator of a designated crisis residential center or the department shall perform the duties under subsection (3) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

(c) Upon learning from a person under RCW 13.32A.082 that the person is providing shelter to a child absent from home; or

(d) Upon learning that a child has been placed with a responsible adult pursuant to RCW 13.32A.060.

(2) Transportation expenses of the child shall be at the parent's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department.

(3) When any of the circumstances under subsection (1) of this section are present, the administrator of a center or the department shall perform the following duties:

(a) Immediately notify the child's parent of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement;

(b) Initially notify the parent that it is the paramount concern of the family reconciliation service personnel to achieve a reconciliation between the parent and child to reunify the family and inform the parent as to the procedures to be followed under this chapter;

(c) Inform the parent whether a referral to children's protective services has been made and, if so, inform the parent of the standard pursuant to *RCW 26.44.020(12) governing child abuse and neglect in this state; and either

(d)(i) Arrange transportation for the child to the residence of the parent, as soon as practicable, when the child and his or her parent agrees to the child's return home or when the parent produces a copy of a court order entered under this chapter requiring the child to reside in the parent's home; or

(ii) Arrange transportation for the child to: (i) [(A)] An out-of-home placement which may include a licensed group care facility or foster family when agreed to by the child and parent; or (ii) [(B)] a certified or licensed mental health or chemical dependency program of the parent's choice.

(4) If the administrator of the crisis residential center performs the duties listed in subsection (3) of this section, he or she shall also notify the department that a child has been admitted to the crisis residential center. [2000 c 123 § 11; 1996 c 133 § 7; 1995 c 312 § 10; 1990 c 276 § 6; 1981 c 298 § 7; 1979 c 155 § 23.]

***Reviser's note:** RCW 26.44.020 was amended by 2007 c 220 § 1, changing subsection (12) to subsection (1), effective October 1, 2008.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.095 Unauthorized leave from crisis residential center—Notice to parents, law enforcement, and the department. The administrator of a crisis residential center shall notify parents, the appropriate law enforcement agency,

and the department immediately as to any unauthorized leave from the center by a child placed at the center. [2000 c 123 § 12; 1996 c 133 § 15; 1995 c 312 § 21.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.100 Family reconciliation services for child in out-of-home placement. Where a child is placed in an out-of-home placement pursuant to RCW 13.32A.090(3)(d)(ii), the department shall make available family reconciliation services in order to facilitate the reunification of the family. Any such placement may continue as long as there is agreement by the child and parent. [2000 c 123 § 13; 1996 c 133 § 16; 1981 c 298 § 8; 1979 c 155 § 24.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.110 Interstate compact to apply, when. If a child who has a legal residence outside the state of Washington is admitted to a crisis residential center or is released by a law enforcement officer to the department, and the child refuses to return home, the provisions of *RCW 13.24.010 shall apply. [1996 c 133 § 17; 1979 c 155 § 25.]

***Reviser's note:** RCW 13.24.010 was repealed by 2003 c 180 § 3, effective August 26, 2008.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Interstate compact on juveniles: Chapter 13.24 RCW.

Additional notes found at www.leg.wa.gov

13.32A.120 Out-of-home placement—Agreement, continuation—Petition to approve or continue. (1) Where either a child or the child's parent or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an out-of-home placement arrived at pursuant to RCW 13.32A.090(3)(d)(ii), the administrator of the center shall immediately contact the remaining party or parties to the agreement and shall attempt to bring about the child's return home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.

(2) If a child and his or her parent cannot agree to an out-of-home placement under RCW 13.32A.090(3)(d)(ii), either the child or parent may file a child in need of services petition to approve an out-of-home placement or the parent may file an at-risk youth petition.

(3) If a child and his or her parent cannot agree to the continuation of an out-of-home placement under RCW 13.32A.090(3)(d)(ii), either the child or parent may file a child in need of services petition to continue an out-of-home placement or the parent may file an at-risk youth petition. [2000 c 123 § 14; 1996 c 133 § 18; 1995 c 312 § 11; 1990 c 276 § 7; 1979 c 155 § 26.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.125 Temporary out-of-home placement in semi-secure crisis residential center. In approving a petition under this chapter, a child may be placed in a semi-secure crisis residential center as a temporary out-of-home placement under the following conditions: (1) No other suitable out-of-home placement is available; (2) space is available in the semi-secure crisis residential center; and (3) no child will be denied access for a five-day placement due to this placement.

Any child referred to a semi-secure crisis residential center by a law enforcement officer, the department, or himself or herself shall have priority over a temporary out-of-home placement in the facility. Any out-of-home placement order shall be subject to this priority, and the administrator of the semi-secure crisis residential center shall transfer the temporary out-of-home placement youth to a new out-of-home placement as necessary to ensure access for youth needing the semi-secure crisis residential center. [1995 c 312 § 44.]

Additional notes found at www.leg.wa.gov

13.32A.128 Child admitted to secure facility—Limitations. The department may take a runaway youth to a secure facility after attempting to notify the parent of the child's whereabouts. The department may not take a child to a secure facility if the department has reasonable cause to believe that the reason for the child's runaway status is the result of abuse or neglect. [2009 c 569 § 5.]

13.32A.130 Child admitted to secure facility—Maximum hours of custody—Evaluation for semi-secure facility or release to department—Parental right to remove child—Reconciliation effort—Information to parent and child—Written statement of services and rights—Crisis residential center immunity from liability. (1) A child admitted to a secure facility located in a juvenile detention center shall remain in the facility for at least twenty-four hours after admission but for not more than five consecutive days. A child admitted to a secure facility not located in a juvenile detention center or a semi-secure facility may remain for not more than fifteen consecutive days. If a child is transferred between a secure and semi-secure facility, the aggregate length of time a child may remain in both facilities shall not exceed fifteen consecutive days per admission, and in no event may a child's stay in a secure facility located in a juvenile detention center exceed five days per admission.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

(ii) In making the determination the administrator shall consider the following information if known: (A) The child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other

person; (E) the child's history of running away; and (F) the child's willingness to cooperate in the assessment.

(b) If the administrator of a secure facility determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall only make a transfer of a child after determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. The department or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of admission, and if the administrator of the center does not consider it likely that reconciliation will be achieved within five days of the child's admission to the center, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. The department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating the services and rights. The administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(7) A crisis residential center and any person employed at the center acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions. [2009 c 569 § 1. Prior: 2000 c 162 § 13; 2000 c 162 § 3; 2000 c 123 § 15; 1997 c 146 § 4; 1996 c 133 § 8; 1995 c 312 § 12; 1994 sp.s. c 7 § 508; 1992 c 205 § 206; 1990 c 276 § 8; 1985 c 257 § 9; 1981 c 298 § 9; 1979 c 155 § 27.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.140 Out-of-home placement—Child in need of services petition by department—Procedure. Unless the department files a dependency petition, the department shall file a child in need of services petition to approve an out-of-home placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed by the department in an out-of-home placement, and:

(a) The parent has been notified that the child was so admitted or placed;

(b) The child cannot return home, and legal authorization is needed for out-of-home placement beyond seventy-two hours;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(3)(d)(ii) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or the parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in an out-of-home placement until a child in need of services petition filed by the

department on behalf of the child is reviewed and resolved by the juvenile court. The department may authorize emergency medical or dental care for a child admitted to a crisis residential center or placed in an out-of-home placement by the department. The state, when the department files a child in need of services petition under this section, shall be represented as provided for in RCW 13.04.093. [2000 c 123 § 16; 1997 c 146 § 5; 1996 c 133 § 19; 1995 c 312 § 15; 1990 c 276 § 9; 1981 c 298 § 10; 1979 c 155 § 28.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.150 Out-of-home placement—Child in need of services petition by child or parent. (1) Except as otherwise provided in this chapter, the juvenile court shall not accept the filing of a child in need of services petition by the child or the parents or the filing of an at-risk youth petition by the parent, unless verification is provided that the department has completed a family assessment. The family assessment shall involve the multidisciplinary team if one exists. The family assessment or plan of services developed by the multidisciplinary team shall be aimed at family reconciliation, reunification, and avoidance of the out-of-home placement of the child. If the department is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section or the parent may proceed under RCW 13.32A.191.

(2) A child or a child's parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement for the child. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition must be filed in the county where the parent resides. The petition shall allege that the child is a child in need of services and shall ask only that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve the placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an out-of-home placement under this chapter.

(3) A petition may not be filed if the child is the subject of a proceeding under chapter 13.34 RCW. [2000 c 123 § 17; 1996 c 133 § 20; 1995 c 312 § 16; 1992 c 205 § 208; 1990 c 276 § 10; 1989 c 269 § 1; 1981 c 298 § 11; 1979 c 155 § 29.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.152 Child in need of services petition—Service on parents—Notice to department—Petitions regarding Indian children. (1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be

attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

(3) When a child in need of services petition is filed by the department, and the court or the petitioning party knows or has reason to know that an Indian child is involved, the provisions of chapter 13.38 RCW apply. [2011 c 309 § 21; 2004 c 64 § 5; 2000 c 123 § 18; 1996 c 133 § 21; 1995 c 312 § 4.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.160 Out-of-home placement—Court action upon filing of child in need of services petition—Child placement. (1) When a proper child in need of services petition to approve an out-of-home placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a)(i) Schedule a fact-finding hearing to be held: (A) For a child who resides in a place other than his or her parent's home and other than an out-of-home placement, within five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for a child living at home or in an out-of-home placement, within ten days; and (ii) notify the parent, child, and the department of such date; (b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving a child in need of services petition; (e) notify the parents of their rights under this chapter and chapters 11.88, 13.34, 70.96A, and 71.34 RCW, including the right to file an at-risk youth petition, the right to submit an application for admission of their child to a treatment facility for alcohol, chemical dependency, or mental health treatment, and the right to file a guardianship petition; and (f) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence other than a HOPE center to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as the requirements of RCW 13.32A.125 are met.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the petition by the court. Any placement may be reviewed by the court within three judicial days upon the request of the juvenile or the juvenile's parent. [2000 c 123 § 19; 1997 c 146 § 6; 1996 c 133 § 22; 1995 c 312 § 17; 1990 c 276 § 11; 1989 c 269 § 2; 1979 c 155 § 30.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.170 Out-of-home placement—Fact-finding hearing. (1) The court shall hold a fact-finding hearing to consider a proper child in need of services petition, giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. At the commencement of the hearing, the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1). If the court approves or denies a child in need of services petition, a written statement of the reasons must be filed.

(2) The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

(a) The child is a child in need of services as defined in RCW 13.32A.030(5);

(b) If the petitioner is a child, he or she has made a reasonable effort to resolve the conflict;

(c) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(d) A suitable out-of-home placement resource is available.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent.

The court may not grant the petition if the child is the subject of a proceeding under chapter 13.34 RCW.

(3) Following the fact-finding hearing the court shall: (a) Approve a child in need of services petition and, if appropriate, enter a temporary out-of-home placement for a period not to exceed fourteen days pending approval of a disposition decision to be made under RCW 13.32A.179(2); (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; or (c) dismiss the petition.

At any time the court may order the department to review the case to determine whether the case is appropriate for a dependency petition under chapter 13.34 RCW. [2000 c 123 § 20; 1996 c 133 § 23; 1995 c 312 § 18; 1989 c 269 § 3; 1987 c 524 § 1; 1985 c 257 § 10; 1984 c 188 § 1; 1981 c 298 § 12; 1979 c 155 § 31.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.175 Out-of-home placement—Contribution to child's support—Enforcement of order. In any proceeding in which the court approves an out-of-home placement, the court shall inquire into the ability of parents to contribute to the child's support. If the court finds that the parents are able to contribute to the support of the child, the court shall order them to make such support payments as the court deems equitable. The court may enforce such an order by

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execution or in any way in which a court of equity may enforce its orders. However, payments shall not be required of a parent who has both opposed the placement and continuously sought reconciliation with, and the return of, the child. All orders entered in a proceeding approving out-of-home placement shall be in compliance with the provisions of RCW 26.23.050. [1995 c 312 § 19; 1987 c 435 § 13; 1981 c 298 § 15.]

Additional notes found at www.leg.wa.gov

13.32A.177 Out-of-home placement—Determination of support payments. A determination of support payments ordered under RCW 13.32A.175 shall be based upon chapter 26.19 RCW. [1995 c 312 § 22; 1988 c 275 § 14.]

Additional notes found at www.leg.wa.gov

13.32A.178 Out-of-home placement—Child support—Exceptions. The department of social and health services shall promulgate rules that create good cause exceptions to the establishment and enforcement of child support from parents of children in out-of-home placement under chapter 13.34 or 13.32A RCW that do not violate federal funding requirements. The department shall present the rules and the department's plan for implementation of the rules to the appropriate committees of the legislature prior to the 2002 legislative session. [2001 c 332 § 8.]

13.32A.179 Out-of-home placement—Disposition hearing—Court order—Dispositional plan—Child subject to contempt proceedings—Dismissal of order at request of department or parent. (1) A disposition hearing shall be held no later than fourteen days after the approval of the temporary out-of-home placement. The parents, child, and department shall be notified by the court of the time and place of the hearing.

(2) At the conclusion of the disposition hearing, the court may: (a) Reunite the family and dismiss the petition; (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; (c) approve an out-of-home placement requested in the child in need of services petition by the parents; or (d) order an out-of-home placement at the request of the child or the department not to exceed ninety days.

At any time the court may order the department to review the matter for purposes of filing a dependency petition under chapter 13.34 RCW. Whether or not the court approves or orders an out-of-home placement, the court may also order any conditions of supervision as set forth in RCW 13.32A.196(3).

(3) The court may only enter an order under subsection (2)(d) of this section if it finds by clear, cogent, and convincing evidence that: (a)(i) The order is in the best interest of the family; (ii) the parents have not requested an out-of-home placement; (iii) the parents have not exercised any other right listed in RCW 13.32A.160(1)(e); (iv) the child has made reasonable efforts to resolve the problems that led to the filing of the petition; (v) the problems cannot be resolved by delivery of services to the family during continued placement of the child in the parental home; (vi) reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to

return home; and (vii) a suitable out-of-home placement resource is available; (b)(i) the order is in the best interest of the child; and (ii) the parents are unavailable; or (c) the parent's actions cause an imminent threat to the child's health or safety.

(4) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. The plan, if ordered, shall address the needs of the child, and the perceived needs of the parents if the order was entered under subsection (2)(d) of this section or if specifically agreed to by the parents. If the parents do not agree or the order was not entered under subsection (2)(d) of this section the plan may only make recommendations regarding services in which the parents may voluntarily participate. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided with timely notification of all court hearings.

(5) A child who fails to comply with a court order issued under this section shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within one year after the entry of the order.

(6) After the court approves or orders an out-of-home placement, the parents or the department may request, and the court may grant, dismissal of the child in need of services proceeding when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(7) The court shall dismiss a placement made under subsection (2)(c) of this section upon the request of the parents. [2000 c 123 § 21; 1997 c 146 § 7; 1996 c 133 § 24; 1995 c 312 § 20.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.180 Out-of-home placement—Court order—No placement in secure residence. (1) If the court orders a three-month out-of-home placement for the child, the court shall specify the person or agency with whom the child shall be placed, those parental powers which will be temporarily awarded to such agency or person including but not limited to the right to authorize medical, dental, and optical treatment, and parental visitation rights. Any agency or residence at which the child is placed must, at a minimum, comply with minimum standards for licensed family foster homes.

(2) No placement made pursuant to this section may be in a secure residence as defined by the federal Juvenile Justice and Delinquency Prevention Act of 1974. [1995 c 312 § 23; 1979 c 155 § 32.]

Additional notes found at www.leg.wa.gov

13.32A.190 Out-of-home placement dispositional order—Review hearings—Time limitation on out-of-home placement—Termination of placement at request of parent. (1) Upon making a dispositional order under RCW 13.32A.179, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with this chapter. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court shall discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have made reasonable efforts to resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the dispositional plan.

(3) Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced. The court shall order the child to return to the home of the parent at the expiration of the placement. If an out-of-home placement is disapproved prior to one hundred eighty days, the court shall enter an order requiring the child to return to the home of the child's parent.

(4) The parents and the department may request, and the juvenile court may grant, dismissal of an out-of-home placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(5) The court shall terminate a placement made under this section upon the request of a parent unless the placement is made pursuant to RCW 13.32A.179(3).

(6) The court may dismiss a child in need of services petition filed by a parent at any time if the court finds good cause to believe that continuation of out-of-home placement would serve no useful purpose.

(7) The court shall dismiss a child in need of services proceeding if the child is the subject of a proceeding under chapter 13.34 RCW. [1996 c 133 § 25; 1995 c 312 § 24; 1989 c 269 § 5; 1984 c 188 § 2; 1981 c 298 § 13; 1979 c 155 § 33.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.191 At-risk youth—Petition by parent. (1) A child's parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth. The depart-

ment shall, when requested, assist the parent in filing the petition. The petition shall be filed in the county where the petitioner resides. The petition shall set forth the name, age, and residence of the child and the names and residence of the child's parents and shall allege that:

- (a) The child is an at-risk youth;
- (b) The petitioner has the right to legal custody of the child;
- (c) Court intervention and supervision are necessary to assist the parent to maintain the care, custody, and control of the child; and
- (d) Alternatives to court intervention have been attempted or there is good cause why such alternatives have not been attempted.

(2) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter. The petition need not specify any proposed disposition following adjudication of the petition. The filing of an at-risk youth petition is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent and confers upon the court the special jurisdiction to assist the parent in maintaining parental authority and responsibility for the child.

(3) A petition may not be filed if a dependency petition is pending under chapter 13.34 RCW. [2000 c 123 § 22; 1995 c 312 § 25.]

Additional notes found at www.leg.wa.gov

13.32A.192 At-risk youth petition—Prehearing procedures. (1) When a proper at-risk youth petition is filed by a child's parent under this chapter, the juvenile court shall:

(a)(i) Schedule a fact-finding hearing to be held: (A) For a child who resides in a place other than his or her parent's home and other than an out-of-home placement, within five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for a child living at home or in an out-of-home placement, within ten days; and (ii) notify the parent and the child of such date;

(b) Notify the parent of the right to be represented by counsel at the parent's own expense;

(c) Appoint legal counsel for the child;

(d) Inform the child and his or her parent of the legal consequences of the court finding the child to be an at-risk youth; and

(e) Notify the parent and the child of their rights to present evidence at the fact-finding hearing.

(2) Unless out-of-home placement of the child is otherwise authorized or required by law, the child shall reside in the home of his or her parent or in an out-of-home placement requested by the parent or child and approved by the parent.

(3) If upon sworn written or oral declaration of the petitioning parent, the court has reason to believe that a child has willfully and knowingly violated a court order issued pursuant to subsection (2) of this section, the court may issue an order directing law enforcement to take the child into custody and place the child in a juvenile detention facility or in a secure facility within a crisis residential center. If the child is placed in detention, a review shall be held as provided in RCW 13.32A.065.

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(4) If both a child in need of services petition and an at-risk youth petition have been filed with regard to the same child, the petitions and proceedings shall be consolidated as an at-risk youth petition. Pending a fact-finding hearing regarding the petition, the child may be placed in the parent's home or in an out-of-home placement if not already placed in a temporary out-of-home placement pursuant to a child in need of services petition. The child or the parent may request a review of the child's placement including a review of any court order requiring the child to reside in the parent's home. [1997 c 146 § 8; 1996 c 133 § 26; 1995 c 312 § 26; 1990 c 276 § 12.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.194 At-risk youth petition—Court procedures. (1) The court shall hold a fact-finding hearing to consider a proper at-risk youth petition. The court shall grant the petition and enter an order finding the child to be an at-risk youth if the allegations in the petition are established by a preponderance of the evidence, unless the child is the subject of a proceeding under chapter 13.34 RCW. If the petition is granted, the court shall enter an order requiring the child to reside in the home of his or her parent or in an out-of-home placement as provided in RCW 13.32A.192(2).

(2) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided timely notification of all court hearings.

(3) If the court grants or denies an at-risk youth petition, a statement of the written reasons shall be entered into the records. If the court denies an at-risk youth petition, the court shall verbally advise the parties that the child is required to remain within the care, custody, and control of his or her parent. [2000 c 123 § 23; 1996 c 133 § 27; 1995 c 312 § 27; 1990 c 276 § 13.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.196 At-risk youth petition—Dispositional hearing. (1) A dispositional hearing shall be held no later than fourteen days after the fact-finding hearing. Each party shall be notified of the time and date of the hearing.

(2) At the dispositional hearing regarding an adjudicated at-risk youth, the court shall consider the recommendations of the parties and the recommendations of any dispositional plan submitted by the department. The court may enter a dispositional order that will assist the parent in maintaining the care, custody, and control of the child and assist the family to resolve family conflicts or problems.

(3) The court may set conditions of supervision for the child that include:

- (a) Regular school attendance;
- (b) Counseling;
- (c) Participation in a substance abuse or mental health outpatient treatment program;
- (d) Reporting on a regular basis to the department or any other designated person or agency; and
- (e) Any other condition the court deems an appropriate condition of supervision including but not limited to: Employment, participation in an anger management program, and refraining from using alcohol or drugs.

(4) No dispositional order or condition of supervision ordered by a court pursuant to this section shall include involuntary commitment of a child for substance abuse or mental health treatment.

(5) The court may order the parent to participate in counseling services or any other services for the child requiring parental participation. The parent shall cooperate with the court-ordered case plan and shall take necessary steps to help implement the case plan. The parent shall be financially responsible for costs related to the court-ordered plan; however, this requirement shall not affect the eligibility of the parent or child for public assistance or other benefits to which the parent or child may otherwise be entitled.

(6) The parent may request dismissal of an at-risk youth proceeding or out-of-home placement at any time. Upon such a request, the court shall dismiss the matter and cease court supervision of the child unless: (a) A contempt action is pending in the case; (b) a petition has been filed under RCW 13.32A.150 and a hearing has not yet been held under RCW 13.32A.179; or (c) an order has been entered under RCW 13.32A.179(3) and the court retains jurisdiction under that subsection. The court may retain jurisdiction over the matter for the purpose of concluding any pending contempt proceedings, including the full satisfaction of any penalties imposed as a result of a contempt finding.

(7) The court may order the department to monitor compliance with the dispositional order, assist in coordinating the provision of court-ordered services, and submit reports at subsequent review hearings regarding the status of the case. [2000 c 123 § 24; 1995 c 312 § 28; 1991 c 364 § 14; 1990 c 276 § 14.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.197 Disposition hearing—Additional orders for specialized treatment—Review hearings—Limitation—Use of state funds. (1) In a disposition hearing, after a finding that a child is a child in need of services or an at-risk youth, the court may adopt the additional orders authorized under this section if it finds that the child involved in those proceedings is not eligible for inpatient treatment for a mental health or substance abuse condition and requires specialized treatment. The court may order that a child be placed in a staff secure facility, other than a crisis residential center, that will provide for the child's participation in a program designed to remedy his or her behavioral difficulties or needs. The court may not enter this order unless, at the disposition hearing, it finds that the placement is clearly necessary to protect the child and that a less restrictive order would be

inadequate to protect the child, given the child's age, maturity, propensity to run away from home, past exposure to serious risk when the child ran away from home, and possible future exposure to serious risk should the child run away from home again.

(2) The order shall require periodic court review of the placement, with the first review hearing conducted not more than thirty days after the date of the placement. At each review hearing the court shall advise the parents of their rights under RCW 13.32A.160(1), review the progress of the child, and determine whether the orders are still necessary for the protection of the child or a less restrictive placement would be adequate. The court shall modify its orders as it finds necessary to protect the child. Reviews of orders adopted under this section are subject to the review provisions under RCW 13.32A.190 and 13.32.198 [13.32A.198].

(3) Placements in staff secure facilities under this section shall be limited to children who meet the statutory definition of a child in need of services or an at-risk youth as defined in RCW 13.32A.030.

(4) State funds may only be used to pay for placements under this section if, and to the extent that, such funds are appropriated to expressly pay for them. [1996 c 133 § 3.]

Findings—1996 c 133: "The legislature finds that no children should be exposed to the dangers inherent in living on the streets. The legislature further finds that there are children who are not mentally ill or chemically dependent who are living on the street in dangerous situations. These children through their at-risk behavior place themselves at great personal risk and danger. The legislature further finds that these children with at-risk behaviors should receive treatment for their problems that result in excessive opposition to parental authority." [1996 c 133 § 1.]

Intent—Construction—1996 c 133: "It is the intent of the legislature that the changes in this act be construed to expedite the administrative and judicial processes provided for in the existing and amended statutes to assist in assuring that children placed in a crisis residential center have an appropriate placement available to them at the conclusion of their stay at the center." [1996 c 133 § 38.]

Additional notes found at www.leg.wa.gov

13.32A.198 At-risk youth—Review by court. (1) Upon making a disposition regarding an adjudicated at-risk youth, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel for the child, advise the parent of the right to be represented by legal counsel at the review hearing at the parent's own expense, and notify the parties of their rights to present evidence at the hearing.

(2) At the review hearing, the court shall approve or disapprove the continuation of court supervision in accordance with the goal of assisting the parent to maintain the care, custody, and control of the child. The court shall determine whether the parent and child are complying with the dispositional plan. If court supervision is continued, the court may modify the dispositional plan.

(3) Court supervision of the child may not be continued past one hundred eighty days from the day the review hearing commenced unless the court finds, and the parent agrees, that there are compelling reasons for an extension of supervision. Any extension granted pursuant to this subsection shall not exceed ninety days.

(4) The court may dismiss an at-risk youth proceeding at any time if the court finds good cause to believe that continuation of court supervision would serve no useful purpose or

that the parent is not cooperating with the court-ordered case plan. The court shall dismiss an at-risk youth proceeding if the child is the subject of a proceeding under chapter 13.34 RCW. [1990 c 276 § 15.]

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.200 Hearings under chapter—Time or place—Public excluded. (1) All hearings pursuant to this chapter may be conducted at any time or place within the county of the residence of the parent and such cases shall be heard in conjunction with the business of any other division of the superior court, except as provided in subsections (2) and (3) of this section.

(2) The public shall be excluded from a child in need of services hearing if the judicial officer finds that it is in the best interest of the child.

(3) The public shall be excluded from an at-risk youth hearing if:

(a) The judicial officer finds that it is in the best interest of the child; or

(b) Either parent requests that the public be excluded from the hearing.

(4) At the beginning of the at-risk youth hearing, the judicial officer shall notify the parents that either parent has the right to request that the public be excluded from the at-risk youth hearing.

(5) If the public is excluded from hearings under subsection (2) or (3) of this section, only such persons who are found by the court to have a direct interest in the case or the work of the court shall be admitted to the proceedings. [2007 c 213 § 1; 2000 c 123 § 25; 1979 c 155 § 34.]

Additional notes found at www.leg.wa.gov

13.32A.205 Acceptance of petitions by court—Damages. No superior court may refuse to accept for filing a properly completed and presented child in need of services petition or an at-risk youth petition. To be properly presented, the petitioner shall verify that the family assessment required under RCW 13.32A.150 has been completed. In the event of an improper refusal that is appealed and reversed, the petitioner shall be awarded actual damages, costs, and attorneys' fees. [1995 c 312 § 32.]

Additional notes found at www.leg.wa.gov

13.32A.210 Foster home placement—Parental preferences. In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, ethnicity, and religion shall be given consideration when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and should be integrated through the foster care team. [1990 c 284 § 24.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

(2012 Ed.)

13.32A.250 Failure to comply with order as civil contempt—Motion—Penalties. (1) In all child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. Except as otherwise provided in this section, the court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a civil contempt of court as provided in RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of this section.

(3) The court may impose remedial sanctions including a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065. [2000 c 162 § 14; 2000 c 162 § 4; 1998 c 296 § 37; 1996 c 133 § 28; 1995 c 312 § 29; 1990 c 276 § 16. Prior: 1989 c 373 § 16; 1989 c 269 § 4; 1981 c 298 § 14.]

Findings—Intent—1998 c 296 §§ 36-39: See note following RCW 7.21.030.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.270 Youth who have been diverted—Alleged prostitution or prostitution loitering offenses—Services and treatment. Within available funding, when a youth who has been diverted under RCW 13.40.070 for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that child with the services and treatment specified in RCW *74.14B.060 and 74.14B.070. [2010 c 289 § 3.]

*Reviser's note: RCW 74.14B.060 was repealed by 2012 c 29 § 14.

13.32A.300 No entitlement to services created by chapter. Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision at public expense of services to any person or family where the department has determined that such

services are unavailable or unsuitable or that the child or family are not eligible for such services. [1995 c 312 § 43.]

Additional notes found at www.leg.wa.gov

Chapter 13.34 RCW
JUVENILE COURT ACT—
DEPENDENCY AND TERMINATION OF
PARENT-CHILD RELATIONSHIP

Sections

- 13.34.010 Short title.
- 13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child.
- 13.34.025 Child dependency cases—Coordination of services—Remedial services.
- 13.34.030 Definitions.
- 13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution.
- 13.34.040 Petition to court to deal with dependent child—Application of federal Indian child welfare act.
- 13.34.050 Court order to take child into custody, when—Hearing.
- 13.34.055 Custody by law enforcement officer—Release from liability.
- 13.34.060 Shelter care—Placement—Custody—Duties of parties.
- 13.34.062 Shelter care—Notice of custody and rights.
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release.
- 13.34.067 Shelter care—Case conference—Service agreement.
- 13.34.069 Shelter care—Order and authorization of health care and education records.
- 13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear—Required notice regarding Indian children.
- 13.34.080 Summons when petition filed—Publication of notice.
- 13.34.090 Rights under chapter proceedings.
- 13.34.092 Rights under chapter proceedings—Appointment of counsel—Notice.
- 13.34.094 Description of services provided to parents.
- 13.34.096 Right to be heard—Notice.
- 13.34.100 Appointment of guardian ad litem—Background information—Rights—Notification and inquiry—Appointment of counsel for child—Review.
- 13.34.102 Guardian ad litem—Training—Registry—Selection—Substitution—Exception.
- 13.34.105 Guardian ad litem—Duties—Immunity—Access to information.
- 13.34.107 Guardian ad litem—Ex parte communications—Removal.
- 13.34.108 Guardian ad litem—Fees.
- 13.34.110 Hearings—Fact-finding and disposition—Time and place, notice.
- 13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings.
- 13.34.120 Social study and reports made available at disposition hearing—Contents—Notice to parents.
- 13.34.125 Voluntary adoption plan—Consideration of preferences for proposed placement.
- 13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Placement with relatives, foster family home, group care facility, or other suitable persons—Placement of an Indian child in out-of-home care—Contact with siblings.
- 13.34.132 Petition seeking termination of parent-child relationship—Requirements.
- 13.34.134 Permanent placement of child.
- 13.34.136 Permanency plan of care.
- 13.34.138 Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance.
- 13.34.141 Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice.
- 13.34.142 Current placement episode—Calculation.
- 13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.
- 13.34.150 Modification of orders.
- 13.34.155 Concurrent jurisdiction over nonparental actions for child custody (*as amended by 2009 c 520*).

- 13.34.155 Concurrent jurisdiction over nonparental actions for child custody—Establishment or modification of parenting plan (*as amended by 2009 c 526*).
- 13.34.160 Order of support for dependent child.
- 13.34.161 Order of support for dependent child—Noncompliance—Enforcement of judgment.
- 13.34.165 Civil contempt—Grounds—Motion—Penalty—Detention review hearing.
- 13.34.174 Order of alcohol or substance abuse diagnostic investigation and evaluation—Treatment plan—Breach of plan—Reports.
- 13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order.
- 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (*as amended by 2009 c 477*).
- 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (*as amended by 2009 c 520*).
- 13.34.190 Order terminating parent and child relationship—Findings.
- 13.34.200 Order terminating parent and child relationship—Rights of parties when granted.
- 13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights.
- 13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability.
- 13.34.232 Guardianship for dependent child—Order, contents—Rights and duties of dependency guardian.
- 13.34.233 Guardianship for dependent child—Modification or termination of order—Hearing—Termination of guardianship.
- 13.34.234 Guardianship for dependent child—Dependency guardianship subsidies.
- 13.34.235 Guardianship for dependent child—Review hearing requirements not applicable—Exception.
- 13.34.237 Guardianship for dependent child—Subject to dependency and termination of parent-child relationship provisions—Exceptions—Request to convert dependency guardianship to guardianship—Dismissal of dependency.
- 13.34.240 Acts, records, and proceedings of Indian tribe or band given full faith and credit.
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- 13.34.390 Comprehensive services for drug-affected and alcohol-affected mothers and infants.
- 13.34.400 Child welfare proceedings—Placement—Documentation.
- 13.34.800 Drug-affected and alcohol-affected infants—Model project.
- 13.34.801 Rules—Definition of "drug-affected infant."
- 13.34.802 Rules—Definition of "alcohol-affected infant."
- 13.34.820 Permanency for dependent children—Annual report.
- 13.34.830 Child protection and child welfare—Racial disproportionality—Evaluation—Report.
- 13.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Family preservation services: Chapter 74.14C RCW.

Foster placement prevention: Chapter 74.14C RCW.

Implementation of chapters 13.32A and 13.34 RCW: RCW 74.13.036.

Information about rights: RCW 26.44.100 through 26.44.120.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Out-of-home care—Social study required: RCW 74.13.065.

Out-of-home placement: RCW 13.32A.140 through 13.32A.190.

Procedures for families in conflict, interstate compact to apply, when: RCW 13.32A.110.

Therapeutic family home program for youth in custody under chapter 13.34 RCW: RCW 74.13.170.

Transitional living programs for youth in the process of being emancipated: RCW 74.13.037.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship". [1977 ex.s. c 291 § 29.]

Additional notes found at www.leg.wa.gov

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter. [1998 c 314 § 1; 1990 c 284 § 31; 1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

13.34.025 Child dependency cases—Coordination of services—Remedial services. (1) The department and supervising agencies shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department and supervising agencies must:

(a) Coordinate and integrate services to children and families, using service plans and activities that address the children's and families' multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;

(b) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and

(c) Access training for department and supervising agency staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

(2) The department shall coordinate within the administrations of the department, and with contracted service providers including supervising agencies, to ensure that parents in dependency proceedings under this chapter receive priority access to remedial services recommended by the department or supervising agency in its social study or ordered by the court for the purpose of correcting any parental deficiencies identified in the dependency proceeding that are capable of being corrected in the foreseeable future. Services may also

be provided to caregivers other than the parents as identified in RCW 13.34.138.

(a) For purposes of this chapter, remedial services are those services defined in the federal adoption and safe families act as time-limited family reunification services. Remedial services include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.

(b) The department shall provide funds for remedial services if the parent is unable to pay to the extent funding is appropriated in the operating budget or otherwise available to the department for such specific services. As a condition for receiving funded remedial services, the court may inquire into the parent's ability to pay for all or part of such services or may require that the parent make appropriate applications for funding to alternative funding sources for such services.

(c) If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department or supervising agency shall promptly notify the court that the parent is unable to engage in the treatment due to the inability to access such services.

(d) This section does not create an entitlement to services and does not create judicial authority to order the provision of services except for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding under this chapter. [2009 c 520 § 20; 2007 c 410 § 2; 2002 c 52 § 2; 2001 c 256 § 2.]

Short title—2007 c 410: See note following RCW 13.34.138.

Intent—2002 c 52: "It is the intent of the legislature to recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention." [2002 c 52 § 1.]

Finding—2001 c 256: "The department of social and health services serves parents and children with multiple needs, which cannot be resolved in isolation. Further, the complexity of service delivery systems is a barrier for families in crisis when a child is removed or a parent is removed from the home. The department must undertake efforts to streamline the delivery of services." [2001 c 256 § 1.]

13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be con-

sidered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031.

(9) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(10) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(11) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruit-

ment, screening, training, supervision, assignment, and discharge of volunteers.

(12) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(13) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(14) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(15) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(16) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(17) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(18) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have

been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(19) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2011 1st sp.s. c 36 § 13. Prior: 2011 c 330 § 3; 2011 c 309 § 22; prior: 2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6; prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution. (1) The administrative office of the courts shall develop standard court forms and format rules for mandatory use by parties in dependency matters commenced under this chapter or chapter 26.44 RCW.

(2012 Ed.)

Forms shall be developed not later than November 1, 2009, and the mandatory use requirement shall be effective January 1, 2010. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) According to rules established by the administrative office of the courts, a party may delete unnecessary portions of the forms and may supplement the mandatory forms with additional material.

(3) Failure by a party to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. The court may, however, require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

(4) The administrative office of the courts shall distribute a master copy of the mandatory forms to all county court clerks. Upon request, the administrative office of the courts and county clerks must distribute the forms to the public and may charge for the cost of production and distribution of the forms. Private vendors also may distribute the forms. Distribution of forms may be in printed or electronic form. [2009 c 491 § 6.]

13.34.040 Petition to court to deal with dependent child—Application of federal Indian child welfare act.

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in RCW 13.38.040. If the child is an Indian child chapter 13.38 RCW shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act and chapter 13.38 RCW have been satisfied. [2011 c 309 § 23; 2004 c 64 § 3; 2000 c 122 § 2; 1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Additional notes found at www.leg.wa.gov

13.34.050 Court order to take child into custody, when—Hearing. (1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody; (b) an

affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child's health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, sexual exploitation as defined in RCW 26.44.020, and a parent's failure to perform basic parental functions, obligations, and duties as the result of substance abuse; and (c) the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody.

(2) Any petition that does not have the necessary affidavit or declaration demonstrating a risk of imminent harm requires that the parents are provided notice and an opportunity to be heard before the order may be entered.

(3) The petition and supporting documentation must be served on the parent, and if the child is in custody at the time the child is removed, on the entity with custody other than the parent. Failure to effect service does not invalidate the petition if service was attempted and the parent could not be found. [2005 c 512 § 9; 2000 c 122 § 3; 1998 c 328 § 1; 1979 c 155 § 38; 1977 ex.s. c 291 § 33.]

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Additional notes found at www.leg.wa.gov

13.34.055 Custody by law enforcement officer—Release from liability. (1) A law enforcement officer shall take into custody a child taken in violation of RCW 9A.40.060 or 9A.40.070. The law enforcement officer shall make every reasonable effort to avoid placing additional trauma on the child by obtaining such custody at times and in a manner least disruptive to the child. The law enforcement officer shall return the child to the person or agency having the right to physical custody unless the officer has reasonable grounds to believe the child should be taken into custody under RCW 13.34.050 or 26.44.050. If there is no person or agency having the right to physical custody available to take custody of the child, the officer may place the child in shelter care as provided in RCW 13.34.060.

(2) A law enforcement officer or public employee acting reasonably and in good faith shall not be held liable in any civil action for returning the child to a person having the apparent right to physical custody. [1984 c 95 § 4.]

Additional notes found at www.leg.wa.gov

13.34.060 Shelter care—Placement—Custody—Duties of parties. (1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays, and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility.

(2) Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered, priority placement for a child in shelter care, pending a court hearing, shall be with any person described in RCW 74.15.020(2)(a) or 13.34.130(1)(b). The person must be willing and available to care for the child and be able to meet any special needs of the child and the court must find that such placement is in the best interests of the child. The person must be willing to facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court. If a child is not initially placed with a relative or other suitable person requested by the parent pursuant to this section, the supervising agency shall make an effort within available resources to place the child with a relative or other suitable person requested by the parent on the next business day after the child is taken into custody. The supervising agency shall document its effort to place the child with a relative or other suitable person requested by the parent pursuant to this section. Nothing within this subsection (2) establishes an entitlement to services or a right to a particular placement.

(3) Whenever a child is taken into custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. [2007 c 413 § 3; 2002 c 52 § 4; 2000 c 122 § 4; 1999 c 17 § 2; 1998 c 328 § 2; 1990 c 246 § 1; 1987 c 524 § 4. Prior: 1984 c 188 § 3; 1984 c 95 § 5; 1983 c 246 § 1; 1982 c 129 § 5; 1979 c 155 § 39; 1977 ex.s. c 291 § 34.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2002 c 52: See note following RCW 13.34.025.

Finding—1999 c 17: "The legislature has found that any intervention into the life of a child is also an intervention in the life of the parent, guardian, or legal custodian, and that the bond between child and parent is a critical element of child development. The legislature now also finds that children who cannot be with their parents, guardians, or legal custodians are best cared for, whenever possible and appropriate by family members with whom they have a relationship. This is particularly important when a child cannot be in the care of a parent, guardian, or legal custodian as a result of a court intervention." [1999 c 17 § 1.]

Additional notes found at www.leg.wa.gov

13.34.062 Shelter care—Notice of custody and rights. (1)(a) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parent, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title, including the right to a shelter care hearing, as soon as possible. Notice must be provided in an understandable manner and take into consideration the parent's, guardian's, or legal custodian's primary language, level of education, and cultural issues.

(b) In no event shall the notice required by this section be provided to the parent, guardian, or legal custodian more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody.

(2)(a) The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

(b) The written notice of custody and rights required by this section shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. Your right to representation continues after the shelter care hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number).

5. You have a right to a case conference to develop a written service agreement following the shelter care hearing. The service agreement may not conflict with the court's order of shelter care. You may request that a multidisciplinary team, family group conference, or prognostic staffing be convened for your child's case. You may participate in these processes with your counsel present.

6. If your child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, the court will enter an order granting the department or other supervising agency the right to inspect and copy all health, medical, mental health, and education records of the child, directing health care providers to release such information without your further consent, and granting the department or supervising

agency or its designee the authority and responsibility, where applicable, to:

- (1) Notify the child's school that the child is in out-of-home placement;
- (2) Enroll the child in school;
- (3) Request the school transfer records;
- (4) Request and authorize evaluation of special needs;
- (5) Attend parent or teacher conferences;
- (6) Excuse absences;
- (7) Grant permission for extracurricular activities;
- (8) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and
- (9) Complete or update school emergency records.

7. If the court decides to place your child in the custody of the department of social and health services or other supervising agency, the department or agency will create a permanency plan for your child, including a primary placement goal and secondary placement goal. The department or agency also will recommend that the court order services for your child and for you, if needed. The department or agency is required to make reasonable efforts to provide you with services to address your parenting problems, and to provide you with visitation with your child according to court orders. Failure to promptly engage in services or to maintain contact with your child may lead to the filing of a petition to terminate your parental rights.

8. Primary and secondary permanency plans are intended to run at the same time so that your child will have a permanent home as quickly as possible. Absent good cause, and when appropriate, the department or other supervising agency must follow the wishes of a natural parent regarding placement of a child. You should tell your lawyer and the court where you wish your child placed immediately, including whether you want your child placed with you, with a relative, or with another suitable person. You also should tell your lawyer and the court what services you feel are necessary and your wishes regarding visitation with your child. Even if you want another parent or person to be the primary placement choice for your child, you should tell your lawyer, the department or other supervising agency, and the court if you want to be a secondary placement option, and you should comply with court orders for services and participate in visitation with your child. Early and consistent involvement in your child's case plan is important for the well-being of your child.

9. A dependency petition begins a judicial process, which, if the court finds your child dependent, could result in substantial restrictions including, the entry or modification of a parenting plan or residential schedule, nonparental custody order or decree, guardianship order, or permanent loss of your parental rights."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used. [2009 c 477 § 2. Prior: 2007 c 413 § 4; 2007 c 409 § 5; 2004 c 147 § 2; 2001 c 332 § 2; 2000 c 122 § 5.]

Findings—Intent—2009 c 477: "The legislature finds that when children have been found dependent and placed in out-of-home care, the likelihood of reunification with their parents diminishes significantly after fifteen months. The legislature also finds that early and consistent parental engagement in services and participation in appropriate parent-child contact and visitation increases the likelihood of successful reunifications. The legislature intends to promote greater awareness among parents in dependency cases of the importance of active participation in services, visitation, and case planning for the child, and the risks created by failure to participate in their child's case over the long term." [2009 c 477 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—2004 c 147: See note following RCW 13.34.067.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release. (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or super-

vising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before

the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in RCW 13.38.040, whether the provisions of the federal Indian child welfare act or chapter 13.38 RCW apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.38 RCW, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2011 c 309 § 24. Prior: 2009 c 520 § 22; 2009 c 491 § 1; 2009 c 477 § 3; 2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Severability—2007 c 413: See note following RCW 13.34.215.

13.34.067 Shelter care—Case conference—Service agreement. (1)(a) Following shelter care and no later than thirty days prior to fact-finding, the department or supervising agency shall convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department or supervising agency and the parent regarding voluntary services for the parent.

(b) The case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the parties. Once the shelter care order is entered, the department or supervising agency is not required to provide additional notice of the case conference to any participants in the case conference.

(c) The written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific services to be provided to the parent.

(d) The case conference agreement must be agreed to and signed by the parties. The court shall not consider the content of the discussions at the case conference at the time of the fact-finding hearing for the purposes of establishing that the child is a dependent child, and the court shall not consider any documents or written materials presented at the case conference but not incorporated into the case conference agreement, unless the documents or written materials were prepared for purposes other than or as a result of the case conference and are otherwise admissible under the rules of evidence.

(2) At any other stage in a dependency proceeding, the department or supervising agency, upon the parent's request, shall convene a case conference. [2009 c 520 § 23; 2004 c 147 § 1; 2001 c 332 § 1.]

Effective date—2004 c 147: "This act takes effect July 1, 2004." [2004 c 147 § 5.]

13.34.069 Shelter care—Order and authorization of health care and education records. If a child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, an order and authorization regarding health care and education records for the child shall be entered. The order shall:

(1) Provide the department or other supervising agency with the right to inspect and copy all health, medical, mental health, and education records of the child;

(2) Authorize and direct any agency, hospital, doctor, nurse, dentist, orthodontist, or other health care provider, therapist, drug or alcohol treatment provider, psychologist, psychiatrist, or mental health clinic, or health or medical records custodian or document management company, or school or school organization to permit the department or other supervising agency to inspect and to obtain copies of any records relating to the child involved in the case, without the further consent of the parent or guardian of the child; and

(3) Grant the department or other supervising agency or its designee the authority and responsibility, where applicable, to:

(a) Notify the child's school that the child is in out-of-home placement;

(b) Enroll the child in school;

(c) Request the school transfer records;

(d) Request and authorize evaluation of special needs;

(e) Attend parent or teacher conferences;

(f) Excuse absences;

(g) Grant permission for extracurricular activities;

(h) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and

(i) Complete or update school emergency records.

Access to records under this section is subject to the child's consent where required by other state and federal laws. [2007 c 409 § 2.]

Effective date—2007 c 409: See note following RCW 13.34.096.

13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear—Required notice regarding Indian children. (1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day

time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child as defined in RCW 13.38.040 is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the

child's Indian tribe to receive such notices. Notice shall comply with RCW 13.38.070. [2011 c 309 § 25; 2004 c 64 § 4; 2000 c 122 § 8; 1993 c 358 § 1; 1990 c 246 § 2; 1988 c 194 § 2; 1983 c 311 § 3; 1983 c 3 § 16; 1979 c 155 § 40; 1977 ex.s. c 291 § 35; 1913 c 160 § 6; RRS § 1987-6. Formerly RCW 13.04.070.]

Legislative finding—1983 c 311: See note following RCW 13.34.030. Additional notes found at www.leg.wa.gov

13.34.080 Summons when petition filed—Publication of notice. (1) The court shall direct the clerk to publish notice in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing when it appears by the petition or verified statement that:

(a)(i) The parent or guardian is a nonresident of this state; or

(ii) The name or place of residence or whereabouts of the parent or guardian is unknown; and

(b) After due diligence, the person attempting service of the summons or notice provided for in RCW 13.34.070 has been unable to make service, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his or her last known place of residence. If the parent, guardian, or legal custodian is believed to be a resident of another state or a county other than the county in which the petition has been filed, notice also shall be published in the county in which the parent, guardian, or legal custodian is believed to reside.

(2) Publication may proceed simultaneously with efforts to provide service in person or by mail, when the court determines there is reason to believe that service in person or by mail will not be successful. Notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known. If their names are unknown, the phrase "To whom it may concern" shall be used, apply to, and be binding upon, those persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition, the date of hearing, and the object of the proceeding in general terms shall be set forth. There shall be filed with the clerk an affidavit showing due publication of the notice. The cost of publication shall be paid by the county at a rate not greater than the rate paid for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section. [2000 c 122 § 9; 1990 c 246 § 3; 1988 c 201 § 1; 1979 c 155 § 41; 1977 ex.s. c 291 § 36; 1961 c 302 § 4; 1913 c 160 § 7; RRS § 1987-7. Formerly RCW 13.04.080.]

Additional notes found at www.leg.wa.gov

13.34.090 Rights under chapter proceedings. (1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent, the child's parent, guardian, or legal

custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing. [2000 c 122 § 10. Prior: 1998 c 328 § 3; 1998 c 141 § 1; 1990 c 246 § 4; 1979 c 155 § 42; 1977 ex.s. c 291 § 37.]

Notice of rights: RCW 26.44.105.

Additional notes found at www.leg.wa.gov

13.34.092 Rights under chapter proceedings—Appointment of counsel—Notice. At the commencement of the shelter care hearing the court shall advise the parties of basic rights as provided in RCW 13.34.090 and appoint counsel pursuant to RCW 13.34.090 if the parent or guardian is indigent unless counsel has been retained by the parent or guardian or the court finds that the right to counsel has been expressly and voluntarily waived in court. [2000 c 122 § 6.]

13.34.094 Description of services provided to parents. The department, or supervising agency after the shelter care hearing, shall, within existing resources, provide to parents requesting or participating in a multidisciplinary team, family group conference, case conference, or prognostic staffing information that describes these processes prior to the processes being undertaken. [2009 c 520 § 24; 2004 c 147 § 3; 2001 c 332 § 6.]

Effective date—2004 c 147: See note following RCW 13.34.067.

13.34.096 Right to be heard—Notice. The department or supervising agency shall provide the child's foster parents, preadoptive parents, or other caregivers with notice of their right to be heard prior to each proceeding held with respect to the child in juvenile court under this chapter. The rights to notice and to be heard apply only to persons with whom a child has been placed by the department before shelter care or supervising agency and who are providing care to the child at the time of the proceeding. This section shall not be con-

strued to grant party status to any person solely on the basis of such notice and right to be heard. [2009 c 520 § 25; 2007 c 409 § 1.]

Effective date—2007 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 409 § 8.]

13.34.100 Appointment of guardian ad litem—Background information—Rights—Notification and inquiry—Appointment of counsel for child—Review. (1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) General training related to the guardian ad litem's duties;
- (c) Specific training related to issues potentially faced by children in the dependency system;
- (d) Specific training or education related to child disability or developmental issues;
- (e) Number of years' experience as a guardian ad litem;
- (f) Number of appointments as a guardian ad litem and the county or counties of appointment;
- (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
- (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;

(i) The results of an examination of state and national criminal identification data. The examination shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall be done through the Washington state patrol criminal identification section and must include a national check from the federal bureau of investigation based on the submission of fingerprints; and

(j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made avail-

able to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program a suitable person appointed by the court to act as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6)(a) Pursuant to this subsection, the department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request counsel and shall ask the child whether he or she wishes to have counsel. The department or supervising agency and the child's guardian ad litem shall notify the child and make this inquiry immediately after:

- (i) The date of the child's twelfth birthday;
- (ii) Assignment of a case involving a child age twelve or older; or
- (iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010.

(b) The department or supervising agency and the child's guardian ad litem shall repeat the notification and inquiry at least annually and upon the filing of any motion or petition affecting the child's placement, services, or familial relationships.

(c) The notification and inquiry is not required if the child has already been appointed counsel.

(d) The department or supervising agency shall note in the child's individual service and safety plan, and the guardian ad litem shall note in his or her report to the court, that the child was notified of the right to request counsel and indicate the child's position regarding appointment of counsel.

- (e) At the first regularly scheduled hearing after:
 - (i) The date of the child's twelfth birthday;
 - (ii) The date that a dependency petition is filed pursuant to this chapter on a child age twelve or older; or
 - (iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010;

the court shall inquire whether the child has received notice of his or her right to request legal counsel from the department or supervising agency and the child's guardian ad litem. The court shall make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday. No inquiry is necessary if the child has already been appointed counsel.

(f) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to this section shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The program shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The court shall immediately appoint the person recommended by the program.

(9) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified. [2010 c 180 § 2; 2009 c 480 § 2; 2000 c 124 § 2; 1996 c 249 § 13; 1994 c 110 § 2; 1993 c 241 § 2; 1988 c 232 § 1; 1979 c 155 § 43; 1977 ex.s. c 291 § 38.]

Findings—2010 c 180: "(1) The legislature recognizes that inconsistent practices in and among counties in Washington have resulted in few children being notified of their right to request legal counsel in their dependency and termination proceedings under RCW 13.34.100.

(2) The legislature recognizes that when children are provided attorneys in their dependency and termination proceedings, it is imperative to provide them with well-trained advocates so that their legal rights around health, safety, and well-being are protected. Attorneys, who have different skills and obligations than guardians ad litem and court-appointed special advocates, especially in forming a confidential and privileged relationship with a child, should be trained in meaningful and effective child advocacy, the child welfare system and services available to a child client, child and adolescent brain development, child and adolescent mental health, and the distinct legal rights of dependent youth, among other things. Well-trained attorneys can provide legal counsel to a child on issues such as placement options, visitation rights, educational rights, access to services while in care and services available to a child upon aging out of care. Well-trained attorneys for a child can:

- (a) Ensure the child's voice is considered in judicial proceedings;
- (b) Engage the child in his or her legal proceedings;
- (c) Explain to the child his or her legal rights;
- (d) Assist the child, through the attorney's counseling role, to consider the consequences of different decisions; and
- (e) Encourage accountability, when appropriate, among the different systems that provide services to children." [2010 c 180 § 1.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

13.34.102 Guardian ad litem—Training—Registry—Selection—Substitution—Exception. (1) All guardians ad litem must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 13.34.100(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2005 c 282 § 26; 2000 c 124 § 3; 1997 c 41 § 6; 1996 c 249 § 17.]

Intent—1996 c 249: See note following RCW 2.56.030.

13.34.105 Guardian ad litem—Duties—Immunity—Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child;

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child's position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in RCW 13.38.040, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100. [2011 c 309 § 26; 2010 c 180 § 3; 2008 c 267 § 13; 2000 c 124 § 4; 1999 c 390 § 2; 1993 c 241 § 3.]

Findings—2010 c 180: See note following RCW 13.34.100.

Additional notes found at www.leg.wa.gov

13.34.107 Guardian ad litem—Ex parte communications—Removal. A guardian ad litem or court-appointed special advocate shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem or court-

appointed special advocate who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case. [2000 c 124 § 11.]

13.34.108 Guardian ad litem—Fees. The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule. [2000 c 124 § 14.]

13.34.110 Hearings—Fact-finding and disposition—Time and place, notice. (1) The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, or legal custodian of the child shall have all of the rights provided in RCW 13.34.090(1). The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.

(2) The court in a fact-finding hearing may consider the history of past involvement of child protective services or law enforcement agencies with the family for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child on the part of the child's parent, guardian, or legal custodian, or for the purpose of establishing that reasonable efforts have been made by the department to prevent or eliminate the need for removal of the child from the child's home. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes.

(3)(a) The parent, guardian, or legal custodian of the child may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030. The parent, guardian, or legal custodian may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent, guardian, or legal custodian and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney, guardian ad litem, or court-appointed special advocate for the child, if any. If the department of social and health services is not the petitioner and is required by the order to supervise the placement of the child or provide services to any party, the department must also agree to and sign the order.

(b) Entry of any stipulated or agreed order of dependency or disposition is subject to approval by the court. The court shall receive and review a social study before entering a stipulated or agreed order and shall consider whether the order is consistent with the allegations of the dependency petition and the problems that necessitated the child's placement in out-of-home care. No social file or social study may

be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence.

(c) Prior to the entry of any stipulated or agreed order of dependency, the parent, guardian, or legal custodian of the child and his or her attorney must appear before the court and the court within available resources must inquire and establish on the record that:

(i) The parent, guardian, or legal custodian understands the terms of the order or orders he or she has signed, including his or her responsibility to participate in remedial services as provided in any disposition order;

(ii) The parent, guardian, or legal custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his or her relationship with the child within the time frames required by state and federal law if he or she fails to comply with the terms of the dependency or disposition orders or fails to substantially remedy the problems that necessitated the child's placement in out-of-home care;

(iii) The parent, guardian, or legal custodian understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent within the meaning of RCW 13.34.030 and shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent, guardian, or legal custodian shall not have the right in any subsequent proceeding for termination of parental rights or dependency guardianship pursuant to this chapter or nonparental custody pursuant to chapter 26.10 RCW to challenge or dispute the fact that the child was found to be dependent; and

(iv) The parent, guardian, or legal custodian knowingly and willingly stipulated and agreed to and signed the order or orders, without duress, and without misrepresentation or fraud by any other party.

If a parent, guardian, or legal custodian fails to appear before the court after stipulating or agreeing to entry of an order of dependency, the court may enter the order upon a finding that the parent, guardian, or legal custodian had actual notice of the right to appear before the court and chose not to do so. The court may require other parties to the order, including the attorney for the parent, guardian, or legal custodian, to appear and advise the court of the parent's, guardian's, or legal custodian's notice of the right to appear and understanding of the factors specified in this subsection. A parent, guardian, or legal custodian may choose to waive his or her presence at the in-court hearing for entry of the stipulated or agreed order of dependency by submitting to the court through counsel a completed stipulated or agreed dependency fact-finding/disposition statement in a form determined by the Washington state supreme court pursuant to General Rule GR 9.

(4) Immediately after the entry of the findings of fact, the court shall hold a disposition hearing, unless there is good cause for continuing the matter for up to fourteen days. If good cause is shown, the case may be continued for longer than fourteen days. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by certified mail of the time and place of any continued hearing. Unless there is reasonable cause to believe the health, safety,

or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (a) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt; (b) are known to the department as having been in contact with the family or child within the past twelve months; and (c) would be an appropriate placement for the child. Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.

The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. [2007 c 220 § 9; 2001 c 332 § 7; 2000 c 122 § 11. Prior: 1995 c 313 § 1; 1995 c 311 § 27; 1993 c 412 § 7; 1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5; prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Legislative finding—1983 c 311: See note following RCW 13.34.030. Additional notes found at www.leg.wa.gov

13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings. (1) All hearings shall be public, and conducted at any time or place within the limits of the county, except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

(3) If the public is excluded from the hearing, the following people may attend the closed hearing unless the judge finds it is not in the best interests of the child:

- (a) The child's relatives;
 - (b) The child's foster parents if the child resides in foster care; and
 - (c) Any person requested by the parent.
- (4) Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200.

(5) Any video recording of the proceedings may be released pursuant to RCW 13.50.100, however, the video recording may not be televised, broadcast, or further disseminated to the public. [2003 c 228 § 1; 2000 c 122 § 12.]

13.34.120 Social study and reports made available at disposition hearing—Contents—Notice to parents. (1) To aid the court in its decision on disposition, a social study shall be made by the person or agency filing the petition. A parent may submit a counselor's or health care provider's evaluation of the parent, which shall either be included in the social study or considered in conjunction with the social study. The study shall include all social files and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file, social study, guardian ad litem report, the court-appointed special advocate's report, if any, and any reports filed by a party at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days

before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the local office closest to the parents' residence. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2)(a) The guardian ad litem or court-appointed special advocate shall file his or her report with the court and with the parties pursuant to court rule prior to a hearing for which a report is required. The report shall include a written list of persons interviewed and reports or documentation considered. If the report makes particular recommendations, the report shall include specific information on which the guardian ad litem or court-appointed special advocate relied in making each particular recommendation.

(b) The parties to the proceeding may file written responses to the guardian ad litem's or court-appointed special advocate's report with the court and deliver such responses to the other parties at a reasonable time or pursuant to court rule before the hearing. The court shall consider any written responses to the guardian ad litem's or court-appointed special advocate's report, including any factual information or recommendations provided in the report. [2000 c 124 § 5; 2000 c 122 § 13; 1998 c 328 § 4; 1996 c 249 § 14; 1994 c 288 § 2; 1993 c 412 § 8; 1987 c 524 § 5; 1979 c 155 § 45; 1977 ex.s. c 291 § 40.]

Reviser's note: This section was amended by 2000 c 122 § 13 and by 2000 c 124 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

13.34.125 Voluntary adoption plan—Consideration of preferences for proposed placement. In those cases where an alleged father, birth parent, or parent has indicated his or her intention to make a voluntary adoption plan for the child and has agreed to the termination of his or her parental rights, the department or supervising agency shall follow the wishes of the alleged father, birth parent, or parent regarding the proposed adoptive placement of the child, if the court determines that the adoption is in the best interest of the child, and the prospective adoptive parents chosen by the alleged father, birth parent, or parent are properly qualified to adopt in compliance with the standards in this chapter and chapter 26.33 RCW. If the department or supervising agency has filed a termination petition, an alleged father's, birth parent's, or parent's preferences regarding the proposed adoptive placement of the child shall be given consideration. [2009 c 520 § 26; 1999 c 173 § 2.]

Additional notes found at www.leg.wa.gov

13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Placement with relatives, foster family home, group care facility, or other suitable persons—Placement of an Indian child in out-of-home care—Contact with siblings. If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition that maintains the child in his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in RCW 13.38.040, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW.

(iii) The department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed as long as the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be competent to provide care for the child.

(2) Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

(3) The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds

that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.

(4) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in RCW 13.38.180.

(5) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a stepbrother or stepsister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the stepsibling.

(7) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and

placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(8) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(9) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court. [2011 c 309 § 27; 2011 c 292 § 1; 2010 c 288 § 1. Prior: 2009 c 520 § 27; 2009 c 491 § 2; 2009 c 397 § 3; prior: 2007 c 413 § 6; 2007 c 412 § 2; 2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15; prior: 1999 c 267 § 16; 1999 c 267 § 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Reviser's note: This section was amended by 2011 c 292 § 1 and by 2011 c 309 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Legislative finding—1983 c 311: See note following RCW 13.34.030.
Additional notes found at www.leg.wa.gov

13.34.132 Petition seeking termination of parent-child relationship—Requirements. A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the department or the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(g) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in RCW 13.38.040, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020. [2011 c 309 § 28; 2000 c 122 § 16.]

13.34.134 Permanent placement of child. If reasonable efforts are not ordered under RCW 13.34.132, a permanency planning hearing shall be held within thirty days of the court order to file a petition to terminate parental rights. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child. [2000 c 122 § 17.]

13.34.136 Permanency plan of care. (1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to *RCW 13.34.130(6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation

is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to *RCW 13.34.130(6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with *RCW 13.34.130(4). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe. [2011 c 309 § 29. Prior: 2009 c 520 § 28; 2009 c 234 § 5; prior: 2008 c 267 § 3; 2008 c 152 § 2; 2007 c 413 § 7; 2004 c 146 § 1; 2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

***Reviser's note:** RCW 13.34.130 was amended by 2011 c 292 § 1, changing subsections (6) and (4) to subsections (8) and (6), respectively.

Findings—Intent—2008 c 152: "The legislature finds that meeting the needs of vulnerable children who enter the child welfare system includes protecting the child's right to a safe, stable, and permanent home where the child receives basic nurturing. The legislature also finds that according to measures of timely dependency case processing, many children's cases are not meeting the federal and state standards intended to promote child-centered decision making in dependency cases. The legislature intends to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases." [2008 c 152 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

13.34.138 Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance. (1) The status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145(1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision by the supervising agency or department shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) Prior to the child returning home, the department or supervising agency must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the dependency. The department or supervising agency may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department or supervising agency must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department or supervising agency of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an enti-

tlement to services or a duty on the part of the department or supervising agency to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

(i) Whether the supervising agency or the department is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child by preventing the return of the child to the home of the child's parent and whether housing assistance should be provided by the department or supervising agency;

(vii) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

(viii) Whether preference has been given to placement with the child's relatives if such placement is in the child's best interests;

(ix) Whether both in-state and, where appropriate, out-of-state placements have been considered;

(x) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(xi) Whether terms of visitation need to be modified;

(xii) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

(xiii) Whether any additional court orders need to be made to move the case toward permanency; and

(xiv) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with the supervising agency's case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the department's or supervising agency's case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's authority to order housing assistance under this chapter is: (a) Limited to cases in which a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child and housing assistance would aid the parent in providing an appropriate home for the child; and (b) subject to the availability of funds appropriated for this specific purpose. Nothing in this chapter shall be construed to create an entitlement to housing assistance nor to create judicial authority to order the provision of such assistance to any person or family if the assistance or funding are unavailable or the child or family are not eligible for such assistance.

(5) The court shall consider the child's relationship with siblings in accordance with *RCW 13.34.130(3). [2009 c 520 § 29; 2009 c 491 § 3; 2009 c 397 § 4; 2009 c 152 § 1. Prior: 2007 c 413 § 8; 2007 c 410 § 1; 2005 c 512 § 3; 2003 c 227 § 5; 2001 c 332 § 5; 2000 c 122 § 19.]

Reviser's note: *(1) RCW 13.34.130 was amended by 2010 c 288 § 1, changing subsection (3) to subsection (4). RCW 13.34.130 was subsequently amended by 2011 c 292 § 1, changing subsection (4) to subsection (6).

(2) This section was amended by 2009 c 152 § 1, 2009 c 397 § 4, 2009 c 491 § 3, and by 2009 c 520 § 29, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 413: See note following RCW 13.34.215.

Short title—2007 c 410: "This act may be known and cited as *Sirita's law*." [2007 c 410 § 9.]

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Intent—2003 c 227: See note following RCW 13.34.130.

13.34.141 Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice. (1) After entry of a dispositional order pursuant to RCW 13.34.130 ordering

placement of a child in out-of-home care, the department shall continue to encourage the parent, guardian, or custodian of the child to engage in services and maintain contact with the child, which shall be accomplished by attaching a standard notice to the services and safety plan to be provided in advance of hearings conducted pursuant to RCW 13.34.138.

(2) The notice shall be photocopied on contrasting paper to distinguish it from the services and safety plan to which it is attached, and shall be in substantially the following form:

"NOTICE

If you have not been maintaining consistent contact with your child in out-of-home care, your ability to reunify with your child may be jeopardized. If this is your situation, you need to be aware that you have important legal rights and must take steps to protect your interests.

1. The department of social and health services (or other supervising agency) and the court have created a permanency plan for your child, including a primary placement plan and a secondary placement plan, and recommending services needed before your child can be placed in the primary or secondary placement. If you want the court to order that your child be reunified with you, you should notify your lawyer and the department, and you should carefully comply with court orders for services and participate regularly in visitation with your child. Failure to promptly engage in services or to maintain contact with your child may lead to the filing of a petition to terminate your rights as a parent.

2. Primary and secondary permanency plans are intended to run at the same time so that your child will have a permanent home as quickly as possible. Even if you want another parent or person to be the primary placement choice for your child, you should tell your lawyer, the department, and the court if you want to be the secondary placement option, and you should comply with any court orders for services and participate in visitation with your child. Early and consistent involvement in your child's case plan is important for the well-being of your child.

3. Dependency review hearings, and all other dependency case hearings, are legal proceedings with potentially serious consequences. Failure to participate, respond, or comply with court orders may lead to the loss of your parental rights." [2009 c 484 § 1.]

13.34.142 Current placement episode—Calculation.

If the most recent date that a child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care occurred prior to the filing of a dependency petition or after filing but prior to entry of a disposition order, such time periods shall be included when calculating the length of the child's current placement episode. [2000 c 122 § 14.]

13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights. (1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the

case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

- (A) Being returned safely to his or her home;
- (B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;
- (C) Being placed for adoption;
- (D) Being placed with a guardian;
- (E) Being placed in the home of a fit and willing relative of the child; or
- (F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(ii) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties

enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [2011 c 330 § 6. Prior: 2009 c 520 § 30; 2009 c 491 § 4; 2009 c 477 § 4; 2008 c 152 § 3; 2007 c 413 § 9; 2003 c 227 § 6; prior: 2000 c 135 § 4; 2000 c 122 § 20; 1999 c 267 § 17; prior: 1998 c 314 § 3; 1998 c 130 § 3; prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Findings—Intent—2008 c 152: See note following RCW 13.34.136.

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

13.34.150 Modification of orders. Any order made by the court in the case of a dependent child may be changed, modified, or set aside, only upon a showing of a change in circumstance or as provided in RCW 13.34.120. [1993 c 412 § 9; 1990 c 246 § 6; 1977 ex.s. c 291 § 43; 1913 c 160 § 15; RRS § 1987-15. Formerly RCW 13.04.150.]

Additional notes found at www.leg.wa.gov

13.34.155 Concurrent jurisdiction over nonparental actions for child custody (as amended by 2009 c 520). (1) The court hearing the dependency petition may hear and determine issues related to chapter 26.10 RCW in a dependency proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. This agreed order may have the concurrence of the other parties to the dependency including the supervising agency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a custody order under chapter 26.10 RCW is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a custody order. Once an order is entered under chapter 26.10 RCW, and the dependency petition dismissed, the department or supervising agency shall not continue to supervise the placement.

(2) Any court order determining issues under chapter 26.10 RCW is subject to modification upon the same showing and standards as a court order determining Title 26 RCW issues.

(3) Any order entered in the dependency court establishing or modifying a permanent legal custody order under chapter 26.10 RCW shall also be filed in the chapter 26.10 RCW action by the prevailing party. Once filed, any order establishing or modifying permanent legal custody shall survive dismissal of the dependency proceeding. [2009 c 520 § 31; 2000 c 135 § 1.]

13.34.155 Concurrent jurisdiction over nonparental actions for child custody—Establishment or modification of parenting plan (as amended by 2009 c 526). (1) The court hearing the dependency petition may hear and determine issues related to chapter 26.10 RCW in a dependency

proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. This agreed order may have the concurrence of the other parties to the dependency including the supervising agency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a custody order under chapter 26.10 RCW is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a custody order. Once an order is entered under chapter 26.10 RCW, and the dependency petition dismissed, the department shall not continue to supervise the placement.

(2)(a) The court hearing the dependency petition may establish or modify a parenting plan under chapter 26.09 or 26.26 RCW as part of a disposition order or at a review hearing when doing so will implement a permanent plan of care for the child and result in dismissal of the dependency.

(b) The dependency court shall adhere to procedural requirements under chapter 26.09 RCW and must make a written finding that the parenting plan established or modified by the dependency court under this section is in the child's best interests.

(c) Unless the whereabouts of one of the parents is unknown to either the department or the court, the parents must agree, subject to court approval, to establish the parenting plan or modify an existing parenting plan.

(d) Whenever the court is asked to establish or modify a parenting plan, the child's residential schedule, the allocation of decision-making authority, and dispute resolution under this section, the dependency court may:

(i) Appoint a guardian ad litem to represent the interests of the child when the court believes the appointment is necessary to protect the best interests of the child; and

(ii) Appoint an attorney to represent the interests of the child with respect to provisions for the parenting plan.

(e) The dependency court must make a written finding that the parenting plan established or modified by the dependency court under this section is in the child's best interests.

(f) The dependency court may interview the child in chambers to ascertain the child's wishes as to the child's residential schedule in a proceeding for the entry or modification of a parenting plan under this section. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to become part of the court record of the dependency case and the case under chapter 26.09 or 26.26 RCW.

(g) In the absence of agreement by a parent, guardian, or legal custodian of the child to allow the juvenile court to hear and determine issues related to the establishment or modification of a parenting plan under chapter 26.09 or 26.26 RCW, a party may move the court to transfer such issues to the family law department of the superior court for further resolution. The court may only grant the motion upon entry of a written finding that it is in the best interests of the child.

(h) In any parenting plan agreed to by the parents and entered or modified in juvenile court under this section, all issues pertaining to child support and the division of marital property shall be referred to or retained by the family law department of the superior court.

(3) Any court order determining issues under chapter 26.10 RCW is subject to modification upon the same showing and standards as a court order determining Title 26 RCW issues.

((3)) (4) Any order entered in the dependency court establishing or modifying a permanent legal custody order or parenting plan, or residential schedule under chapters 26.09, 26.10, and 26.26 RCW shall also be filed in the chapter 26.09, 26.10, and 26.26 RCW action by the moving or prevailing party. If the petitioning or moving party has been found indigent and appointed counsel at public expense in the dependency proceeding, no filing fees shall be imposed by the clerk. Once filed, any order, parenting plan, or residential schedule establishing or modifying permanent legal custody of a child shall survive dismissal of the dependency proceeding. [2009 c 526 § 2; 2000 c 135 § 1.]

Reviser's note: RCW 13.34.155 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

13.34.160 Order of support for dependent child. (1) In an action brought under this chapter, the court may inquire into the ability of the parent or parents of the child to pay child support and may enter an order of child support as set

forth in chapter 26.19 RCW. The court may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW 26.23.050.

(2) For purposes of this section, if a dependent child's parent is an unmarried minor parent or pregnant minor applicant, then the parent or parents of the minor shall also be deemed a parent or parents of the dependent child. However, liability for child support under this subsection only exists if the parent or parents of the unmarried minor parent or pregnant minor applicant are provided the opportunity for a hearing on their ability to provide support. Any child support order requiring such a parent or parents to provide support for the minor parent's child may be effective only until the minor parent reaches eighteen years of age.

(3) In the absence of a court order setting support, the department may establish an administrative order for support upon receipt of a referral or application for support enforcement services. [2004 c 183 § 1; 1997 c 58 § 505; 1993 c 358 § 2; 1987 c 435 § 14; 1981 c 195 § 8; 1977 ex.s. c 291 § 44; 1969 ex.s. c 138 § 1; 1961 c 302 § 7; 1913 c 160 § 8; RRS § 1987-8. Formerly RCW 13.04.100.]

Effective date—2004 c 183: "This act takes effect July 1, 2004." [2004 c 183 § 6.]

Good cause exceptions to the establishment and enforcement of child support from parents of children in out-of-home placement: RCW 13.32A.178.

Additional notes found at www.leg.wa.gov

13.34.161 Order of support for dependent child—Noncompliance—Enforcement of judgment. In any case in which the court has ordered a parent or parents, guardian, or other person having custody of a child to pay support under RCW 13.34.160 and the order has not been complied with, the court may, upon such person or persons being duly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order and enter judgment for that amount against the defaulting party or parties, and the judgment shall be docketed as are other judgments for the payment of money.

In such judgments, the county in which the order is entered shall be the judgment creditor, or the state may be the judgment creditor where the child is in the custody of a state agency. Judgments may be enforced by the prosecuting attorney of the county, or the attorney general where the state is the judgment creditor and any moneys recovered shall be paid into the registry of the juvenile court and shall be disbursed to such person, persons, agency, or governmental department as the court finds is entitled to it.

Such judgments shall remain valid and enforceable for a period of ten years after the date of entry. [2000 c 122 § 22; 1981 c 195 § 9; 1977 ex.s. c 291 § 45; 1961 c 302 § 8; 1955 c 188 § 1. Formerly RCW 13.34.170, 13.04.105.]

Financial responsibility for costs of detention: RCW 13.16.085.

Additional notes found at www.leg.wa.gov

13.34.165 Civil contempt—Grounds—Motion—Penalty—Detention review hearing. (1) Failure by a party to comply with an order entered under this chapter is civil contempt of court as provided in RCW 7.21.030(2)(e).

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(2) The maximum term of confinement that may be imposed as a remedial sanction for contempt of court under this section is confinement for up to seven days.

(3) A child held for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter.

(5) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065. [2000 c 122 § 21; 1998 c 296 § 38; 1996 c 133 § 29; 1989 c 373 § 17; 1985 c 257 § 1.]

Findings—Intent—1998 c 296 §§ 36-39: See note following RCW 7.21.030.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.34.174 Order of alcohol or substance abuse diagnostic investigation and evaluation—Treatment plan—Breach of plan—Reports. (1) The provisions of this section shall apply when a court orders a party to undergo an alcohol or substance abuse diagnostic investigation and evaluation.

(2) The facility conducting the investigation and evaluation shall make a written report to the court stating its findings and recommendations including family-based services or treatment when appropriate. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (a) Type of treatment;
- (b) Nature of treatment;
- (c) Length of treatment;
- (d) A treatment time schedule; and
- (e) Approximate cost of the treatment.

The affected person shall be included in developing the appropriate treatment plan. The treatment plan must be signed by the treatment provider and the affected person. The initial written progress report based on the treatment plan shall be sent to the appropriate persons six weeks after initiation of treatment. Subsequent progress reports shall be provided after three months, six months, twelve months, and thereafter every six months if treatment exceeds twelve months. Reports are to be filed with the court in a timely manner. Close-out of the treatment record must include summary of pretreatment and posttreatment, with final outcome and disposition. The report shall also include recommendations for ongoing stability and decrease in destructive behavior.

Each report shall also be filed with the court and a copy given to the person evaluated and the person's counsel. A

copy of the treatment plan shall also be given to the department's or supervising agency's caseworker and to the guardian ad litem. Any program for chemical dependency shall meet the program requirements contained in chapter 70.96A RCW.

(3) If the court has ordered treatment pursuant to a dependency proceeding it shall also require the treatment program to provide, in the reports required by subsection (2) of this section, status reports to the court, the department, the supervising agency, and the person or person's counsel regarding the person's cooperation with the treatment plan proposed and the person's progress in treatment.

(4) If a person subject to this section fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program or agency administering the treatment shall report such breach to the court, the department, the guardian ad litem, the supervising agency if any, and the person or person's counsel, within twenty-four hours, together with its recommendation. These reports shall be made as a declaration by the person who is personally responsible for providing the treatment.

(5) Nothing in this chapter may be construed as allowing the court to require the department to pay for the cost of any alcohol or substance abuse evaluation or treatment program. [2009 c 520 § 32; 2000 c 122 § 23; 1993 c 412 § 5.]

13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order. (1) The court, upon receiving a report under RCW 13.34.174(4) or at the department's or supervising agency's request, may schedule a show cause hearing to determine whether the person is in violation of the treatment conditions. All parties shall be given notice of the hearing. The court shall hold the hearing within ten days of the request for a hearing. At the hearing, testimony, declarations, reports, or other relevant information may be presented on the person's alleged failure to comply with the treatment plan and the person shall have the right to present similar information on his or her own behalf.

(2) If the court finds that there has been a violation of the treatment conditions it shall modify the dependency order, as necessary, to ensure the safety of the child. The modified order shall remain in effect until the party is in full compliance with the treatment requirements. [2009 c 520 § 33; 2000 c 122 § 24; 1993 c 412 § 6.]

13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (as amended by 2009 c 477). (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; (~~or~~)

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

- (a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;
 - (b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;
 - (c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or
 - (d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.
- (4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[2009 c 477 § 5; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (as amended by 2009 c 520). (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:
 - (i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or
 - (ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and
 - (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petitioner may allege that the parent has been convicted of:

- (a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;
- (b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;
- (c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or
- (d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to

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protect your interests. This petition could result in permanent loss of your parental rights.

- 1. You have the right to a fact-finding hearing before a judge.
- 2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the ((department of social and health services)) supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[2009 c 520 § 34; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Reviser's note: RCW 13.34.180 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Additional notes found at www.leg.wa.gov

13.34.190 Order terminating parent and child relationship—Findings. (1) Except as provided in subsection (2) of this section, after hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

- (a)(i) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or
- (ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or
- (iii) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(iv) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(b) Such an order is in the best interests of the child.

(2) The provisions of chapter 13.38 RCW must be followed in any proceeding under this chapter for termination of the parent-child relationship of an Indian child as defined in RCW 13.38.040. [2011 c 309 § 30; 2010 c 288 § 2; 2000 c 122 § 26; 1998 c 314 § 5; 1993 c 412 § 3; 1992 c 145 § 15; 1990 c 284 § 33; 1979 c 155 § 48; 1977 ex.s. c 291 § 47.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the

termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child, except as provided in RCW 13.34.215: PROVIDED, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that an Indian child derives from the child's descent from a member of a federally recognized Indian tribe.

(3) An order terminating the parent-child relationship shall include a statement addressing the status of the child's sibling relationships and the nature and extent of sibling placement, contact, or visits. [2007 c 413 § 2; 2003 c 227 § 7; 2000 c 122 § 27; 1977 ex.s. c 291 § 48.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Additional notes found at www.leg.wa.gov

13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights. If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department or a supervising agency willing to accept custody for the purpose of placing the child for adoption. If an adoptive home has not been identified, the department or supervising agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a guardianship of the child under chapter 13.36 RCW or chapter 11.88 RCW, or a permanent custody order under chapter 26.10 RCW, has not been entered by the court, the court shall review the case every six months until a decree of adoption is entered. The supervising agency shall take reasonable steps to ensure that the child maintains relationships with siblings as provided in *RCW 13.34.130(3) and shall report to the court the status and extent of such relationships. [2010 c 272 § 13. Prior: 2009 c 520 § 35; 2009 c 152 § 2; 2003 c 227 § 8; 2000 c 122 § 28; 1991 c 127 § 6; 1988 c 203 § 2; 1979 c 155 § 49; 1977 ex.s. c 291 § 49.]

***Reviser's note:** RCW 13.34.130 was amended by 2010 c 288 § 1, changing subsection (3) to subsection (4). RCW 13.34.130 was subsequently amended by 2011 c 292 § 1, changing subsection (4) to subsection (6).

Intent—2003 c 227: See note following RCW 13.34.130.

Additional notes found at www.leg.wa.gov

13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability. (1) A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent under the following circumstances:

(a) The child was previously found to be a dependent child under this chapter;

(b) The child's parent's rights were terminated in a proceeding under this chapter;

(c)(i) The child has not achieved his or her permanency plan; or

(ii) While the child achieved a permanency plan, it has not since been sustained;

(d) Three years have passed since the final order of termination was entered; and

(e) The child must be at least twelve years old at the time the petition is filed. Upon the child's motion for good cause shown, or on its own motion, the court may hear a petition filed by a child younger than twelve years old.

(2) If the child is eligible to petition the juvenile court under subsection (1) of this section and a parent whose rights have been previously terminated contacts the department or supervising agency or the child's guardian ad litem regarding reinstatement, the department or supervising agency or the guardian ad litem must notify the eligible child about his or her right to petition for reinstatement of parental rights.

(3) A child seeking to petition under this section shall be provided counsel at no cost to the child.

(4) The petition must be signed by the child in the absence of a showing of good cause as to why the child could not do so.

(5) If, after a threshold hearing to consider the parent's apparent fitness and interest in reinstatement of parental rights, the court finds by a preponderance of the evidence that the best interests of the child may be served by reinstatement of parental rights, the juvenile court shall order that a hearing on the merits of the petition be held.

(6) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the department or the supervising agency, the child's attorney, and the child. The court shall also order the department or supervising agency to give prior notice of any hearing to the child's former parent whose parental rights are the subject of the petition, any parent whose rights have not been terminated, the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(7) The juvenile court shall conditionally grant the petition if it finds by clear and convincing evidence that the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interest. In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following:

(a) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided

in the record of the prior termination proceedings and prior termination order;

(b) The age and maturity of the child, and the ability of the child to express his or her preference;

(c) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and

(d) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(8) In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to achieve his or her permanency plan, the department or supervising agency shall provide the court, and the court shall review, information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

(9)(a) If the court conditionally grants the petition under subsection (7) of this section, the case will be continued for six months and a temporary order of reinstatement entered. During this period, the child shall be placed in the custody of the parent. The department or supervising agency shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide transition services to the family as appropriate.

(b) If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(c) If the child has been successfully placed with the parent for six months, the court order reinstating parental rights remains in effect and the court shall dismiss the dependency.

(10) After the child has been placed with the parent for six months, the court shall hold a hearing. If the placement with the parent has been successful, the court shall enter a final order of reinstatement of parental rights, which shall restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child. The court shall dismiss the dependency and direct the clerk's office to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

(11) The granting of the petition under this section does not vacate or otherwise affect the validity of the original termination order.

(12) Any parent whose rights are reinstated under this section shall not be liable for any child support owed to the department pursuant to RCW 13.34.160 or Title 26 RCW or costs of other services provided to a child for the time period from the date of termination of parental rights to the date parental rights are reinstated.

(13) A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child have changed since the time of the termination of parental rights and reunification is now appropriate.

(14) This section is retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time

of the hearing regardless of the date parental rights were terminated.

(15) The state, the department, the supervising agency, and its employees are not liable for civil damages resulting from any act or omission in the provision of services under this section, unless the act or omission constitutes gross negligence. This section does not create any duty and shall not be construed to create a duty where none exists. This section does not create a cause of action against the state, the department, the supervising agency, or its employees concerning the original termination. [2011 c 292 § 2; 2010 c 180 § 4; 2009 c 520 § 36; 2008 c 267 § 1; 2007 c 413 § 1.]

Findings—2010 c 180: See note following RCW 13.34.100.

Severability—2007 c 413: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 413 § 13.]

13.34.232 Guardianship for dependent child—Order, contents—Rights and duties of dependency guardian. (1) An order establishing a dependency guardianship shall:

(a) Appoint a person or agency to serve as dependency guardian for the limited purpose of assisting the court to supervise the dependency;

(b) Specify the dependency guardian's rights and responsibilities concerning the care, custody, and control of the child. A dependency guardian shall not have the authority to consent to the child's adoption;

(c) Specify the dependency guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child;

(d) Specify an appropriate frequency of visitation between the parent and the child; and

(e) Specify the need for any continued involvement of the supervising agency and the nature of that involvement, if any.

(2) Unless the court specifies otherwise in the guardianship order, the dependency guardian shall maintain the physical custody of the child and have the following rights and duties:

(a) Protect, discipline, and educate the child;

(b) Provide food, clothing, shelter, education as required by law, and routine health care for the child;

(c) Consent to necessary health and surgical care and sign a release of health care information to appropriate authorities, pursuant to law;

(d) Consent to social and school activities of the child; and

(e) Provide an annual written accounting to the court regarding receipt by the dependency guardian of any funds, benefits, or property belonging to the child and expenditures made therefrom.

(3) As used in this section, the term "health care" includes, but is not limited to, medical, dental, psychological, and psychiatric care and treatment.

(4) The child shall remain dependent for the duration of the guardianship. While the guardianship remains in effect, the dependency guardian shall be a party to any dependency proceedings pertaining to the child.

(5) The guardianship shall remain in effect only until the child is eighteen years of age or until the court terminates the guardianship order, whichever occurs sooner. [2010 c 272 § 14; 1994 c 288 § 7; 1993 c 412 § 4; 1981 c 195 § 3.]

13.34.233 Guardianship for dependent child—Modification or termination of order—Hearing—Termination of guardianship. (1) Any party may request the court under RCW 13.34.150 to modify or terminate a dependency guardianship order. Notice of any motion to modify or terminate the guardianship shall be served on all other parties, including any agency that was responsible for supervising the child's placement at the time the guardianship petition was filed. Notice in all cases shall be served upon the department. If the department or supervising agency was not previously a party to the guardianship proceeding, the department or supervising agency shall nevertheless have the right to: (a) Initiate a proceeding to modify or terminate a guardianship; and (b) intervene at any stage of such a proceeding.

(2) The guardianship may be modified or terminated upon the motion of any party, the department, or the supervising agency if the court finds by a preponderance of the evidence that there has been a substantial change of circumstances subsequent to the establishment of the guardianship and that it is in the child's best interest to modify or terminate the guardianship. The court shall hold a hearing on the motion before modifying or terminating a guardianship.

(3) Upon entry of an order terminating the guardianship, the dependency guardian shall not have any rights or responsibilities with respect to the child and shall not have legal standing to participate as a party in further dependency proceedings pertaining to the child. The court may allow the child's dependency guardian to attend dependency review proceedings pertaining to the child for the sole purpose of providing information about the child to the court.

(4) Upon entry of an order terminating the guardianship, the child shall remain dependent and the court shall either return the child to the child's parent or order the child into the custody, control, and care of the department or a supervising agency for placement in a foster home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to such chapter. The court shall not place a child in the custody of the child's parent unless the court finds that reasons for removal as set forth in RCW 13.34.130 no longer exist and that such placement is in the child's best interest. The court shall thereafter conduct reviews as provided in RCW 13.34.138 and, where applicable, shall hold a permanency planning hearing in accordance with RCW 13.34.145. [2009 c 520 § 38; 2000 c 122 § 30; 1995 c 311 § 24; 1994 c 288 § 8; 1981 c 195 § 4.]

13.34.234 Guardianship for dependent child—Dependency guardianship subsidies. A dependency guardian who is a licensed foster parent at the time the guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order may be eligible for a guardianship subsidy on behalf of the child. [2010 c 272 § 15; 2009 c 235 § 6; 1994 c 288 § 9; 1981 c 195 § 5.]

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

13.34.235 Guardianship for dependent child—Review hearing requirements not applicable—Exception. A dependency guardianship is not subject to the review hearing requirements of RCW 13.34.138 unless ordered by the court under RCW 13.34.232(1)(e). [2000 c 122 § 31; 1981 c 195 § 6.]

13.34.237 Guardianship for dependent child—Subject to dependency and termination of parent-child relationship provisions—Exceptions—Request to convert dependency guardianship to guardianship—Dismissal of dependency. (1) Notwithstanding the provisions of chapter 13.36 RCW, a dependency guardianship established by court order under this chapter and in force on June 10, 2010, shall remain subject to the provisions of this chapter unless: (a) The dependency guardianship is modified or terminated under the provisions of this chapter; or (b) the dependency guardianship is converted by court order to a guardianship pursuant to a petition filed under RCW 13.36.030.

(2) A dependency guardian or the department or supervising agency may request the juvenile court to convert a dependency guardianship established under this chapter to a guardianship under chapter 13.36 RCW by filing a petition under RCW 13.36.030. If both the dependency guardian and the department or supervising agency agree that the dependency guardianship should be converted to a guardianship under this chapter, and if the court finds that such conversion is in the child's best interests, the court shall grant the petition and enter an order of guardianship in accordance with RCW 13.36.050.

(3) The court shall dismiss the dependency established under this chapter upon the entry of a guardianship order under chapter 13.36 RCW. [2010 c 272 § 11.]

13.34.240 Acts, records, and proceedings of Indian tribe or band given full faith and credit. The courts of this state shall give full faith and credit as provided for in the United States Constitution to the public acts, records, and judicial proceedings of any Indian tribe or band in any proceeding brought pursuant to this chapter to the same extent that full faith and credit is given to the public acts, records, and judicial proceedings of any other state. [1979 c 155 § 52.]

Additional notes found at www.leg.wa.gov

13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination. (1) Where any parent or Indian custodian voluntarily consents to foster care placement of an Indian child and a petition for dependency has not been filed regarding the child, such consent shall not be valid unless executed in writing before the court and filed with the court. The consent shall be accompanied by the written certification of the court that the terms and consequences of the consent were fully explained in detail to the parent or Indian custodian during the court proceeding and were fully understood by the parent or Indian custodian. The court shall also certify in writing either that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any

consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) To obtain court validation of a voluntary consent to foster care placement, any person may file a petition for validation alleging that there is located or residing within the county an Indian child whose parent or Indian custodian wishes to voluntarily consent to foster care placement of the child and requesting that the court validate the consent as provided in this section. The petition shall contain the name, date of birth, and residence of the child, the names and residences of the consenting parent or Indian custodian, and the name and location of the Indian tribe in which the child is a member or eligible for membership. The petition shall state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be followed. Reasonable attempts shall be made by the petitioner to ascertain and set forth in the petition the identity, location, and custodial status of any parent or Indian custodian who has not consented to foster care placement and why that parent or Indian custodian cannot assume custody of the child.

(3) Upon filing of the petition for validation, the clerk of the court shall schedule the petition for a hearing on the court validation of the voluntary consent no later than forty-eight hours after the petition has been filed, excluding Saturdays, Sundays, and holidays. Notification of time, date, location, and purpose of the validation hearing shall be provided as soon as possible to the consenting parent or Indian custodian, the department or supervising agency which is to assume responsibility for the child's placement and care pursuant to the consent to foster care placement, and the Indian tribe in which the child is enrolled or eligible for enrollment as a member. If the identity and location of any nonconsenting parent or Indian custodian is known, reasonable attempts shall be made to notify the parent or Indian custodian of the consent to placement and the validation hearing. Notification under this subsection may be given by the most expedient means, including, but not limited to, mail, personal service, telephone, and telegraph.

(4) Any parent or Indian custodian may withdraw consent to a voluntary foster care placement, made under this section, at any time. Unless the Indian child has been taken in custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the Indian child shall be returned to the parent or Indian custodian upon withdrawal of consent to foster care placement of the child.

(5) Upon termination of the voluntary foster care placement and return of the child to the parent or Indian custodian, the department or supervising agency which had assumed responsibility for the child's placement and care pursuant to the consent to foster care placement shall file with the court written notification of the child's return and shall also send such notification to the Indian tribe in which the child is enrolled or eligible for enrollment as a member and to any other party to the validation proceeding including any non-custodial parent. [2009 c 520 § 39; 1997 c 386 § 18; 1987 c 170 § 2.]

Additional notes found at www.leg.wa.gov

13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encour-

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aged. (1) In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child with a relative or other suitable person pursuant to RCW 13.34.130. Preferences such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care, relatives, other suitable persons, and foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) For purposes of this section:

(a) "Foster care team" means the relative, other suitable person, or foster parent currently providing care, the currently assigned department employee, and the parent or parents; and

(b) "Birth family" means the persons described in RCW 74.15.020(2)(a). [2011 c 89 § 5; 2009 c 491 § 5; 2003 c 226 § 2; 2002 c 52 § 7; 2000 c 122 § 32; 1990 c 284 § 25.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Findings—Intent—2003 c 226: "The legislature finds that a large group of children spend a significant part of their lives in foster care. Each individual connected to a child in an out-of-home placement must have an abiding appreciation of the seriousness of the child's separation from his or her family and the past, whether that separation is short, long, or permanent in nature. It is the intent of the legislature to recognize and honor the history and the family connections that each child brings to an out-of-home placement.

The legislature finds that creating and sanctioning a connection between a child's birth parents and foster family, when appropriate, can result in better relationships among birth families, children, foster families, and social workers. Creating and sanctioning this connection can result in greater foster placement stability and fewer disruptions for children, as well as greater satisfaction for foster parents and social workers." [2003 c 226 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

13.34.265 Foster home placement—Considerations.

If a child has been previously placed in out-of-home care and is subsequently returned to out-of-home care, and the department cannot locate an appropriate and available relative or other suitable person, the preferred placement for the child is in a foster family home where the child previously was placed, if the following conditions are met:

(1) The foster family home is available and willing to care for the child;

(2) The foster family is appropriate and able to meet the child's needs; and

(3) The placement is in the best interest of the child. [2009 c 482 § 2.]

13.34.267 Extended foster care services—Postponement of dependency proceeding dismissal—Placement, care of youth—Appointment of counsel—Case plan—Dismissal. (1) In order to facilitate the delivery of extended foster care services, the court shall postpone for six months the dismissal of a dependency proceeding for any child who is a dependent child in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday is:

(a) Enrolled in a secondary education program or a secondary education equivalency program; or

(b) Enrolled in a postsecondary academic or postsecondary vocational program, or has applied for and can demonstrate that he or she intends to timely enroll in a postsecondary academic or postsecondary vocational program.

(2)(a) The six-month postponement under this subsection is intended to allow a reasonable window of opportunity for an eligible youth who reaches the age of eighteen to request extended foster care services from the department or supervising agency. The court shall dismiss the dependency if the youth:

(i) Has not requested extended foster care services from the department by the end of the six-month period; or

(ii) Is no longer eligible for extended foster care services under *RCW 74.13.031(10) at any point during the six-month period.

(b) Until the youth requests to participate in the extended foster care program, the department is relieved of any supervisory responsibility for the youth.

(3) A youth who participates in extended foster care while completing a secondary education or equivalency program may continue to receive extended foster care services for the purpose of participating in a postsecondary academic or postsecondary vocational education program if, at the time the secondary education or equivalency program is completed, the youth has applied to and can demonstrate that he or she intends to timely enroll in a postsecondary academic or vocational education program. The dependency shall be dismissed if the youth fails to timely enroll or continue in the postsecondary program, or reaches age twenty-one, whichever is earlier.

(4) A youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or guardian shall be dismissed from the dependency proceeding when the youth reaches the age of eighteen years.

(5) The court shall order a youth participating in extended foster care services to be under the placement and care authority of the department, subject to the youth's continuing agreement to participate in extended foster care services.

(6) The court shall appoint counsel to represent a youth, as defined in RCW 13.34.030(2)(b), in dependency proceedings under this section.

(7) The case plan for and delivery of services to a youth receiving extended foster care services is subject to the review requirements set forth in RCW 13.34.138 and 13.34.145, and should be applied in a developmentally appropriate

manner, as they relate to youth age eighteen to twenty-one years. Additionally, the court shall consider:

(a) Whether the youth is safe in his or her placement;

(b) Whether the youth continues to be eligible for extended foster care services;

(c) Whether the current placement is developmentally appropriate for the youth;

(d) The youth's development of independent living skills; and

(e) The youth's overall progress toward transitioning to full independence and the projected date for achieving such transition.

(8) Prior to the hearing, the youth's attorney shall indicate whether there are any contested issues and may provide additional information necessary for the court's review.

(9) Upon the request of the youth, or when the youth is no longer eligible to receive extended foster care services according to rules adopted by the department, the court shall dismiss the dependency. [2012 c 52 § 4; 2011 c 330 § 7.]

***Reviser's note:** RCW 74.13.031 was amended by 2012 c 259 § 8, changing subsection (10) to subsection (11).

Intent—2012 c 52: See note following RCW 74.13.031.

Intent—2011 c 330: See note following RCW 13.04.011.

13.34.270 Child with developmental disability—Out-of-home placement—Permanency planning hearing. (1) Whenever the department places a child with a developmental disability in out-of-home care pursuant to RCW 74.13.350, the department shall obtain a judicial determination within one hundred eighty days of the placement that continued placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination is required.

(2) To obtain the judicial determination, the department shall file a petition alleging that there is located or residing within the county a child who has a developmental disability and that the child has been placed in out-of-home care pursuant to RCW 74.13.350. The petition shall request that the court review the child's placement, make a determination whether continued placement is in the best interests of the child, and take other necessary action as provided in this section. The petition shall contain the name, date of birth, and residence of the child and the names and residences of the child's parent or legal guardian who has agreed to the child's placement in out-of-home care. Reasonable attempts shall be made by the department to ascertain and set forth in the petition the identity, location, and custodial status of any parent who is not a party to the placement agreement and why that parent cannot assume custody of the child.

(3) Upon filing of the petition, the clerk of the court shall schedule the petition for a hearing to be held no later than fourteen calendar days after the petition has been filed. The department shall provide notification of the time, date, and purpose of the hearing to the parent or legal guardian who has agreed to the child's placement in out-of-home care. The department shall also make reasonable attempts to notify any parent who is not a party to the placement agreement, if the parent's identity and location is known. Notification under this section may be given by the most expedient means,

including but not limited to, mail, personal service, and telephone.

(4) The court shall appoint a guardian ad litem for the child as provided in RCW 13.34.100, unless the court for good cause finds the appointment unnecessary.

(5) Permanency planning hearings shall be held as provided in this section. At the hearing, the court shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

(a) For children age ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order under chapter 11.88 RCW has not previously been entered. The hearing shall take place no later than twelve months following commencement of the child's current placement episode.

(b) For children over age ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order under chapter 11.88 RCW has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(c) No later than ten working days before the permanency planning hearing, the department shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties. The plan shall be directed toward securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent or legal guardian; adoption; guardianship; or long-term out-of-home care, until the child is age eighteen, with a written agreement between the parties and the child's care provider.

(d) If a goal of long-term out-of-home care has been achieved before the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remains appropriate. In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal.

(e) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the voluntary placement agreement is terminated.

(6) Any party to the voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian, unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The department shall notify the court upon termination of the voluntary placement agreement and return of the child to the care of the child's parent or legal guardian. Whenever a voluntary

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placement agreement is terminated, an action under this section shall be dismissed.

(7) When state or federal funds are expended for the care and maintenance of a child with a developmental disability, placed in care as a result of an action under this chapter, the department shall refer the case to the division of child support, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child.

(8) This section does not prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030. An action filed under this section shall be dismissed upon the filing of a dependency petition regarding a child who is the subject of the action under this section. [2004 c 183 § 2; 2000 c 122 § 33; 1998 c 229 § 2; 1997 c 386 § 19.]

Effective date—2004 c 183: See note following RCW 13.34.160.

Additional notes found at www.leg.wa.gov

13.34.300 Relevance of failure to cause juvenile to attend school to neglect petition. The legislature finds that it is the responsibility of the custodial parent, parents or guardian to ensure that children within the custody of such individuals attend school as provided for by law. To this end, while a parent's failure to cause a juvenile to attend school should not alone provide a basis for a neglect petition against the parent or guardian, when a neglect petition is filed on the basis of other evidence, a parent or guardian's failure to take reasonable steps to ensure that the juvenile attends school may be relevant to the question of the appropriate disposition of a neglect petition. [2000 c 122 § 34; 1979 ex.s. c 201 § 3.]

13.34.315 Health care—Evaluation and treatment. Whenever a child is ordered removed from his or her home pursuant to this chapter, the agency charged with his or her care may authorize an evaluation and treatment for the child's routine and necessary medical, dental, or mental health care, and all necessary emergency care. [2006 c 221 § 2.]

Finding—2006 c 221: "The legislature recognizes that foster children have enhanced health care needs and that it is necessary to improve the system of providing health care for foster children. The legislature further recognizes the importance of meeting the mental health needs of children in foster care, as well as their medical and dental health care needs. The legislature finds that there must be greater coordination and integration of systems, in particular coordination between children's administration and the health and recovery services administration as well as other agencies that provide or pay for health services for foster youth, to ensure that the health care needs of children in foster care are met in a timely manner." [2006 c 221 § 1.]

13.34.320 Inpatient mental health treatment—When parental consent required—Hearing. The department or supervising agency shall obtain the prior consent of a child's parent, legal guardian, or legal custodian before a dependent child is admitted into an inpatient mental health treatment facility. If the child's parent, legal guardian, or legal custodian is unavailable or does not agree with the proposed admission, the department or supervising agency shall request a hearing and provide notice to all interested parties to seek prior approval of the juvenile court before such admission. In the event that an emergent situation creating a risk of substantial harm to the health and welfare of a child in the custody of the department or supervising agency does not

allow time for the department or supervising agency to obtain prior approval or to request a court hearing before consenting to the admission of the child into an inpatient mental health hospital, the department or supervising agency shall seek court approval by requesting that a hearing be set on the first available court date. [2009 c 520 § 40; 1999 c 188 § 2.]

Intent—1999 c 188: "It is the intent of the legislature that minor children in the care and custody of the department of social and health services under chapter 13.34 RCW be provided the most appropriate possible mental health care consistent with the child's best interests, family reconciliation, the child's medical need for mental health treatment, available state and community resources, and professional standards of medical care. The legislature intends that admission of such minors for mental health hospitalization be made pursuant to the criteria and standards for mental health services for minors established in chapter 71.34 RCW, and that minor children in the care and custody of the department in need of mental health hospitalization shall retain all rights set forth therein. The legislature specifically intends that this act may not be construed to affect the standards or procedures established for the involuntary commitment of minors under chapter 71.34 RCW." [1999 c 188 § 1.]

13.34.330 Inpatient mental health treatment—Placement. A dependent child who is admitted to an inpatient mental health facility shall be placed in a facility, with available treatment space, that is closest to the family home, unless the department or supervising agency, in consultation with the admitting authority finds that admission in the facility closest to the child's home would jeopardize the health or safety of the child. [2009 c 520 § 41; 1999 c 188 § 3.]

Intent—1999 c 188: See note following RCW 13.34.320.

13.34.340 Release of records—Disclosure to treating physician. For minors who cannot consent to the release of their records with the department or supervising agency because they are not old enough to consent to treatment, or, if old enough, lack the capacity to consent, or if the minor is receiving treatment involuntarily with a provider the department or supervising agency has authorized to provide mental health treatment under RCW 13.34.320, the department or supervising agency shall disclose, upon the treating physician's request, all relevant records, including the minor's passport as established under RCW 74.13.285, in the department's or supervising agency's possession that the treating physician determines contain information required for treatment of the minor. The treating physician shall maintain all records received from the department or supervising agency in a manner that distinguishes the records from any other records in the minor's file with the treating physician and the department or supervising agency records may not be disclosed by the treating physician to any other person or entity absent a court order except that, for medical purposes only, a treating physician may disclose the department or supervising agency records to another treating physician. [2009 c 520 § 42; 2000 c 122 § 35; 1999 c 188 § 4.]

Intent—1999 c 188: See note following RCW 13.34.320.

13.34.350 Dependent children—Information sharing—Guidelines. In order to facilitate communication of information needed to serve the best interest of any child who is the subject of a dependency case filed under this chapter, the department shall, consistent with state and federal law governing the release of confidential information, establish guidelines, and shall use those guidelines for the facilitation

of communication of relevant information among divisions, providers, the courts, the family, caregivers, caseworkers, and others. [2009 c 520 § 43; 2001 c 52 § 2.]

Finding—2001 c 52: "Recent analysis of the child dependency system following the death of Zy'Nyia Nobles indicated poor communication of relevant information from the courts, to the department, within programs between caseworkers, between divisions, among specialists, caregivers, and family. Appropriate service delivery necessitates communication of relevant information. Barriers to appropriate communication must be eliminated." [2001 c 52 § 1.]

Additional notes found at www.leg.wa.gov

13.34.360 Transfer of newborn to qualified person—Criminal liability—Notification to child protective services—Definitions. (1) For purposes of this section:

(a) "Appropriate location" means (i) the emergency department of a hospital licensed under chapter 70.41 RCW during the hours the hospital is in operation; (ii) a fire station during its hours of operation and while fire personnel are present; or (iii) a federally designated rural health clinic during its hours of operation.

(b) "Newborn" means a live human being who is less than seventy-two hours old.

(c) "Qualified person" means (i) any person that the parent transferring the newborn reasonably believes is a bona fide employee, volunteer, or medical staff member of the hospital or federally designated rural health clinic and who represents to the parent transferring the newborn that he or she can and will summon appropriate resources to meet the newborn's immediate needs; or (ii) a firefighter, volunteer, or emergency medical technician at a fire station who represents to the parent transferring the newborn that he or she can and will summon appropriate resources to meet the newborn's immediate needs.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location is not subject to criminal liability under RCW 9A.42.060, 9A.42.070, 9A.42.080, 26.20.030, or 26.20.035.

(3)(a) The qualified person at an appropriate location shall not require the parent transferring the newborn to provide any identifying information in order to transfer the newborn.

(b) The qualified person at an appropriate location shall attempt to protect the anonymity of the parent who transfers the newborn, while providing an opportunity for the parent to anonymously give the qualified person such information as the parent knows about the family medical history of the parents and the newborn. The qualified person at an appropriate location shall provide referral information about adoption options, counseling, appropriate medical and emotional after-care services, domestic violence, and legal rights to the parent seeking to transfer the newborn.

(c) If a parent of a newborn transfers the newborn to a qualified person at an appropriate location pursuant to this section, the qualified person shall cause child protective services to be notified within twenty-four hours after receipt of such a newborn. Child protective services shall assume custody of the newborn within twenty-four hours after receipt of notification.

(d) A federally designated rural health clinic is not required to provide ongoing medical care of a transferred newborn beyond that already required by law and may trans-

fer the newborn to a hospital licensed under chapter 70.41 RCW. The federally designated rural health clinic shall notify child protective services of the transfer of the newborn to the hospital.

(e) A hospital, federally designated rural health clinic, or fire station, its employees, volunteers, and medical staff are immune from any criminal or civil liability for accepting or receiving a newborn under this section.

(4)(a) Beginning July 1, 2011, an appropriate location shall post a sign indicating that the location is an appropriate place for the safe and legal transfer of a newborn.

(b) To cover the costs of acquiring and placing signs, appropriate locations may accept nonpublic funds and donations. [2009 c 290 § 1; 2002 c 331 § 2.]

Intent—2002 c 331: "The legislature intends to increase the likelihood that pregnant women will obtain adequate prenatal care and will provide their newborns with adequate health care during the first few days of their lives. The legislature recognizes that prenatal and postdelivery health care for newborns and their mothers is especially critical to their survival and well-being. The legislature does not intend to encourage the abandonment of newborn children nor to change existing law relating to notification to parents under chapter 13.34 RCW, but rather to assure that abandonment does not occur and that all newborns have an opportunity for adequate health care and a stable home life." [2002 c 331 § 1.]

Effective date—2002 c 331: "Sections 1 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 3, 2002]." [2002 c 331 § 9.]

13.34.370 Evaluation of parties—Selection of evaluators. The court may order expert evaluations of parties to obtain information regarding visitation issues or other issues in a case. These evaluations shall be performed by appointed evaluators who are mutually agreed upon by the court, the supervising agency, the department, and the parents' counsel, and, if the child is to be evaluated, by the representative for the child. If no agreement can be reached, the court shall select the expert evaluator. [2009 c 520 § 44; 2004 c 146 § 2.]

13.34.380 Visitation policies and protocols—Development—Elements. The department shall develop consistent policies and protocols, based on current relevant research, concerning visitation for dependent children to be implemented consistently throughout the state. The department shall develop the policies and protocols in consultation with researchers in the field, community-based agencies, court-appointed special advocates, parents' representatives, and court representatives. The policies and protocols shall include, but not be limited to: The structure and quality of visitations; and training for department and supervising agency caseworkers, visitation supervisors, and foster parents related to visitation.

The policies and protocols shall be consistent with the provisions of this chapter and implementation of the policies and protocols shall be consistent with relevant orders of the court. [2009 c 520 § 45; 2004 c 146 § 3.]

13.34.385 Petition for visitation—Relatives of dependent children—Notice—Modification of order—Effect of granting the petition—Retroactive application. (1) A relative of a dependent child may petition the juvenile court for reasonable visitation with the child if:

(a) The child has been found to be a dependent child under this chapter;

(b) The parental rights of both of the child's parents have been terminated;

(c) The child is in the custody of the department, another public agency, or a supervising agency; and

(d) The child has not been adopted and is not in a pre-adoptive home or other permanent placement at the time the petition for visitation is filed.

(2) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the department, other public agency, or supervising agency having custody of the child, the child's attorney or guardian ad litem if applicable, and the child. The court shall also order the custodial agency to give prior notice of any hearing to the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(3) The juvenile court may grant the petition for visitation if it finds that the requirements of subsection (1) of this section have been met, and that unsupervised visitation between the child and the relative does not present a risk to the child's safety or well-being and that the visitation is in the best interests of the child. In determining the best interests of the child the court shall consider, but is not limited to, the following:

(a) The love, affection, and strength of the relationship between the child and the relative;

(b) The length and quality of the prior relationship between the child and the relative;

(c) Any criminal convictions for or founded history of abuse or neglect of a child by the relative;

(d) Whether the visitation will present a risk to the child's health, welfare, or safety;

(e) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;

(f) Any other factor relevant to the child's best interest.

(4) The visitation order may be modified at any time upon a showing that the visitation poses a risk to the child's safety or well-being. The visitation order shall state that visitation will automatically terminate upon the child's placement in a preadoptive home, if the child is adopted, or if there is a subsequent founded abuse or neglect allegation against the relative.

(5) The granting of the petition under this section does not grant the relative the right to participate in the dependency action and does not grant any rights to the relative not otherwise specified in the visitation order.

(6) This section is retroactive and applies to any eligible dependent child at the time of the filing of the petition for visitation, regardless of the date parental rights were terminated.

(7) For the purpose of this section, "relative" means a relative as defined in RCW 74.15.020(2)(a), except parents.

(8) This section is intended to provide an additional procedure by which a relative may request visitation with a dependent child. It is not intended to impair or alter the ability a court currently has to order visitation with a relative under the dependency statutes. [2009 c 520 § 46; 2008 c 259 § 1.]

13.34.390 Comprehensive services for drug-affected and alcohol-affected mothers and infants. The department

and the department of health shall develop and expand comprehensive services for drug-affected and alcohol-affected mothers and infants. Subject to funds appropriated for this purpose, the expansion shall be in evidence-based, research-based, or consensus-based practices, and shall expand capacity in underserved regions of the state. [2009 c 520 § 47; 2005 c 504 § 303.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

13.34.400 Child welfare proceedings—Placement—Documentation. In any proceeding under this chapter, if the department or supervising agency submits a report to the court in which the department is recommending a new placement or a change in placement, the department or supervising agency shall include the documents relevant to persons in the home in which a child will be placed and listed in subsections (1) through (5) of this section to the report. The department or supervising agency shall include only these relevant documents and shall not attach the entire history of the subject of the report.

(1) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to substance abuse treatment, mental health treatment, anger management classes, or domestic violence classes, the department or supervising agency shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the progress report or evaluation submitted by the provider, but may not include the entire history with the provider.

(2) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to visitation with a child, the department or supervising agency shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the most recent visitation report, a visitation report referencing a specific incident alleged in the report, or summary of the visitation prepared by the person who supervised the visitation. The documentation attached to the report shall not include the entire visitation history.

(3) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to the psychological status of a person, the department or supervising agency shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the progress report, evaluation, or summary submitted by the provider, but shall not include the entire history of the person.

(4) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to injuries to a child, the department or supervising agency shall attach a summary of the physician's report, prepared by the physician or the physician's designee, relating to the recommendation, opinion, or assertion by the department.

(5) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to a home study, licensing action, or background check information, the department or supervising agency shall attach the

document or documents upon which that recommendation, opinion, or assertion is based. [2009 c 520 § 48; 2007 c 411 § 2.]

Finding—2007 c 411: "The legislature finds that in order to allow courts to make well-informed placement decisions for children in the care of the state, the courts must have accurate information, including documentation supporting assertions or recommendations made by social workers, when appropriate." [2007 c 411 § 1.]

Short title—2007 c 411: "This act shall be known and cited as the Rafael Gomez act." [2007 c 411 § 3.]

13.34.800 Drug-affected and alcohol-affected infants—Model project. To the extent funds are appropriated, the department shall operate a model project to provide services to women who give birth to infants exposed to the nonprescription use of controlled substances or abuse of alcohol by the mother during pregnancy. Within available funds, the project may be offered in one site in each of the three department's administrative regions that have the highest incidence of drug-affected or alcohol-affected infants annually. The project shall accept women referred to it by the department following the birth of a drug-affected or alcohol-affected infant. The model project shall be concluded by July 1, 2002. [1998 c 314 § 30.]

Additional notes found at www.leg.wa.gov

13.34.801 Rules—Definition of "drug-affected infant." By July 1, 1999, the department of social and health services, in consultation with the department of health, shall adopt rules to implement chapter 314, Laws of 1998, including a definition of "drug-affected infant," which shall be limited to infants who are affected by a mother's nonprescription use of controlled substances. [1998 c 314 § 25.]

13.34.802 Rules—Definition of "alcohol-affected infant." By July 1, 1999, the department of social and health services, in consultation with the department of health, shall adopt rules to implement chapter 314, Laws of 1998, including a definition of "alcohol-affected infant," which shall be limited to infants who are affected by a mother's abuse of alcohol. [1998 c 314 § 29.]

13.34.820 Permanency for dependent children—Annual report. (1) The administrative office of the courts, in consultation with the attorney general's office and the department of social and health services, shall compile an annual report, providing information about cases that fail to meet statutory guidelines to achieve permanency for dependent children.

(2) The administrative office of the courts shall submit the annual report required by this section to appropriate committees of the legislature by December 1st of each year, beginning on December 1, 2007. [2007 c 410 § 6.]

Short title—2007 c 410: See note following RCW 13.34.138.

13.34.830 Child protection and child welfare—Racial disproportionality—Evaluation—Report. (1) Within amounts appropriated for this specific purpose, or within funding made available by private grant or contribution, the Washington state institute for public policy shall evaluate the department of social and health services' use of structured decision-making practices and implementation of

the family team decision-making model to determine whether and how those child protection and child welfare efforts result in reducing disproportionate representation of African-American, Native American, and Latino children in the state's child welfare system. The institute shall analyze the points in the system at which current data reflect the greatest levels of disproportionality. The institute shall report its findings to the legislature and the department of social and health services by September 1, 2010.

(2) If adequate funding is not made available through state appropriation or through private grant or contribution to simultaneously study the impact on racial disproportionality of both the structured decision-making process and family team decision-making model, the institute shall first study and report on the family team decision-making model. The department of social and health services and the Washington state institute for public policy jointly, shall:

(a) Promptly complete and execute a data sharing agreement to comply with the department's confidential or records requirements and to provide the institute with data and other information necessary to conduct its evaluation; and

(b) Identify potential sources of private funding to supplement any state-appropriated amounts. [2009 c 213 § 2.]

Findings—2009 c 213: "(1) The legislature finds that research conducted by the Washington state institute for public policy released in June 2008, demonstrates that racial disproportionality exists in Washington's child welfare system and that the greatest disproportionality occurs when the initial referral to child protective services is made and when the decision is made to place a child in out-of-home care. The institute's research also demonstrates that children of African-American, Native American, and Latino families have disproportionately longer lengths of stay in foster care.

(2) The legislature finds further that the department of social and health services, in a December 2008 report issued pursuant to chapter 465, Laws of 2007, identified initial recommendations for remediation of racial disproportionality, including examining specific current child welfare practices, structured decision making and family team decision making, to determine whether and how these practices might result in reducing or eliminating racial disproportionality." [2009 c 213 § 1.]

13.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 42.]

Chapter 13.36 RCW GUARDIANSHIP

Sections

13.36.010 Finding—Intent.
13.36.020 Definitions.

(2012 Ed.)

13.36.030 Guardianship petition—Requirements—Contents—Application of Indian child welfare act, federal servicemembers civil relief act, Washington service members' civil relief act.
13.36.040 Hearing—Establishing guardianship—Exceptions—Conversion of dependency guardianship to guardianship.
13.36.050 Court order to establish guardianship—Contents—Custody, rights, and duties—Funds, benefits—Dismissal of dependency—Letter.
13.36.060 Guardianship modification—Attorneys' fees, court costs.
13.36.070 Guardianship termination—Petition, affidavit.
13.36.080 Appointment of guardian ad litem or attorney for the child.
13.36.090 Guardianship subsidies—Relative guardianship subsidy—Rules—Licensed foster parent eligibility.

13.36.010 Finding—Intent. The legislature finds that a guardianship is an appropriate permanent plan for a child who has been found to be dependent under chapter 13.34 RCW and who cannot safely be reunified with his or her parents. The legislature is concerned that parents not be pressured by the department into agreeing to the entry of a guardianship when further services would increase the chances that the child could be reunified with his or her parents. The legislature intends to create a separate guardianship chapter to establish permanency for children in foster care through the appointment of a guardian and dismissal of the dependency. [2010 c 272 § 1.]

13.36.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Child" means any individual under the age of eighteen years.

(2) "Department" means the department of social and health services.

(3) "Dependent child" means a child who has been found by a court to be dependent in a proceeding under chapter 13.34 RCW.

(4) "Guardian" means a person who: (a) Has been appointed by the court as the guardian of a child in a legal proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to court order. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW for the purpose of assisting the court in supervising the dependency.

(5) "Relative" means a person related to the child in the following ways: (a) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great; (b) stepfather, stepmother, stepbrother, and stepsister; (c) a person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; (d) spouses of any persons named in (a), (b), or (c) of this subsection, even after the marriage is terminated; (e) relatives, as named in (a), (b), (c), or (d) of this subsection, of any half sibling of the child; or (f) extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent who provides care in the family abode on a twenty-

four hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(6) "Suitable person" means a nonrelative with whom the child or the child's family has a preexisting relationship; who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child; and with whom the child has been placed pursuant to RCW 13.34.130.

(7) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2010 c 272 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

13.36.030 Guardianship petition—Requirements—Contents—Application of Indian child welfare act, federal servicemembers civil relief act, Washington service members' civil relief act. (1) Any party to a dependency proceeding under chapter 13.34 RCW may request a guardianship be established for a dependent child by filing a petition in juvenile court under this chapter. All parties to the dependency and the proposed guardian must receive adequate notice of all proceedings under this chapter. For purposes of this chapter, a dependent child age twelve years or older is a party to the proceedings. A proposed guardian has the right to intervene in proceedings under this chapter.

(2) To be designated as a proposed guardian in a petition under this chapter, a person must be age twenty-one or over and must meet the minimum requirements to care for children as established by the department under RCW 74.15.030, including but not limited to licensed foster parents, relatives, and suitable persons.

(3) Every petition filed in proceedings under this chapter shall contain: (a) A statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of that act shall apply; (b) a statement alleging whether the federal servicemembers civil relief act of 2003, 50 U.S.C. Sec. 501 et seq. applies to the proceeding; and (c) a statement alleging whether the Washington service members' civil relief act, chapter 38.42 RCW, applies to the proceeding.

(4) Every order or decree entered in any proceeding under this chapter shall contain: (a) A finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied; (b) a finding that the federal servicemembers civil relief act of 2003 does or does not apply; and (c) a finding that the Washington service members' civil relief act, chapter 38.42 RCW, does or does not apply. [2010 c 272 § 3.]

13.36.040 Hearing—Establishing guardianship—Exceptions—Conversion of dependency guardianship to guardianship. (1) At the hearing on a guardianship petition,

all parties have the right to present evidence and cross-examine witnesses. The rules of evidence apply to the conduct of the hearing. The hearing under this section to establish a guardianship or convert an existing dependency guardianship to a guardianship under this section is a stage of the dependency proceedings for purposes of RCW 13.34.090(2).

(2) A guardianship shall be established if:

(a) The court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or to continue efforts to return custody of the child to the parent; and

(b) All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under RCW 13.36.050; or

(c)(i) The child has been found to be a dependent child under RCW 13.34.030;

(ii) A dispositional order has been entered pursuant to RCW 13.34.130;

(iii) At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least six consecutive months following a finding of dependency under RCW 13.34.030;

(iv) The services ordered under RCW 13.34.130 and 13.34.136 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

(v) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(vi) The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen.

(3) The court may not establish a guardianship for a child who has no legal parent unless the court, in addition to making the required findings set forth in subsection (2) of this section, finds one or more exceptional circumstances exist and the benefits for the child of establishing the guardianship outweigh any potential disadvantage to the child of having no legal parent. Exceptional circumstances may include but are not limited to:

(a) The child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption; or

(b) The proposed guardian has demonstrated a commitment to provide for the long-term care of the child and: (i) Is a relative of the child; (ii) has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or (iii) the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age twelve years or older, the child also has identified the proposed guardian as the preferred guardian.

(4) Upon the request of a dependency guardian appointed under chapter 13.34 RCW and the department or supervising agency, the court shall convert a dependency

guardianship established under chapter 13.34 RCW to a guardianship under this chapter. [2010 c 272 § 4.]

13.36.050 Court order to establish guardianship—Contents—Custody, rights, and duties—Funds, benefits—Dismissal of dependency—Letter.

(1) If the court has made the findings required under RCW 13.36.040, the court shall issue an order establishing a guardianship for the child. If the guardian has not previously intervened, the guardian shall be made a party to the guardianship proceeding upon entry of the guardianship order. The order shall:

- (a) Appoint a person to be the guardian for the child;
- (b) Specify the guardian's rights and responsibilities concerning the care, custody, control, and nurturing of the child;
- (c) Specify the guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child;

(d) Specify an appropriate frequency and type of contact between the parent or parents and the child, if applicable, and between the child and his or her siblings, if applicable; and

(e) Specify the need for and scope of continued oversight by the court, if any.

(2) The guardian shall maintain physical and legal custody of the child and have the following rights and duties under the guardianship:

(a) Duty to protect, nurture, discipline, and educate the child;

(b) Duty to provide food, clothing, shelter, education as required by law, and health care for the child, including but not limited to, medical, dental, mental health, psychological, and psychiatric care and treatment;

(c) Right to consent to health care for the child and sign a release authorizing the sharing of health care information with appropriate authorities, in accordance with state law;

(d) Right to consent to the child's participation in social and school activities; and

(e) Duty to notify the court of a change of address of the guardian and the child. Unless specifically ordered by the court, however, the standards and requirements for relocation in chapter 26.09 RCW do not apply to guardianships established under this chapter.

(3) If the child has independent funds or other valuable property under the control of the guardian, the guardian shall provide an annual written accounting, supported with appropriate documentation, to the court regarding receipt and expenditure by the guardian of any such funds or benefits. This subsection shall not be construed to require a guardian to account for any routine funds or benefits received from a public social service agency on behalf of the child.

(4) The guardianship shall remain in effect until the child reaches the age of eighteen years or until the court terminates the guardianship, whichever occurs sooner.

(5) Once the dependency has been dismissed pursuant to RCW 13.36.070, the court shall not order the department or other supervising agency to supervise or provide case management services to the guardian or the child as part of the guardianship order.

(6) The court shall issue a letter of guardianship to the guardian upon the entry of the court order establishing the guardianship under this chapter. [2010 c 272 § 5.]

(2012 Ed.)

13.36.060 Guardianship modification—Attorneys' fees, court costs. (1) A guardian or a parent of the child may petition the court to modify the visitation provisions of a guardianship order by:

(a) Filing with the court a motion for modification and an affidavit setting forth facts supporting the requested modification; and

(b) Providing notice and a copy of the motion and affidavit to all other parties. The nonmoving parties may file and serve opposing affidavits.

(2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested modification should not be granted.

(3) If the court finds that a motion to modify a guardianship order has been brought in bad faith, the court may assess attorneys' fees and court costs of the nonmoving party against the moving party. [2010 c 272 § 6.]

13.36.070 Guardianship termination—Petition, affidavit.

(1) Any party to a guardianship proceeding may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the child or the guardian and that the termination is necessary to serve the best interests of the child. The petition and affidavit must be served on the department or supervising agency and all parties to the guardianship.

(2) Except as provided in subsection (3) of this section, the court shall not terminate a guardianship unless it finds, upon the basis of facts that have arisen since the guardianship was established or that were unknown to the court at the time the guardianship was established, that a substantial change has occurred in the circumstances of the child or the guardian and that termination of the guardianship is necessary to serve the best interests of the child. The effect of a guardian's duties while serving in the military potentially impacting guardianship functions shall not, by itself, be a substantial change of circumstances justifying termination of a guardianship.

(3) The court may terminate a guardianship on the agreement of the guardian, the child, if the child is age twelve years or older, and a parent seeking to regain custody of the child if the court finds by a preponderance of the evidence and on the basis of facts that have arisen since the guardianship was established that:

(a) The parent has successfully corrected the parenting deficiencies identified by the court in the dependency action, and the circumstances of the parent have changed to such a degree that returning the child to the custody of the parent no longer creates a risk of harm to the child's health, welfare, and safety;

(b) The child, if age twelve years or older, agrees to termination of the guardianship and the return of custody to the parent; and

(c) Termination of the guardianship and return of custody of the child to the parent is in the child's best interests.

(4) Upon the entry of an order terminating a guardianship, the court shall enter an order:

(a) Granting the child's parent with legal and physical custody of the child;

(b) Granting a substitute guardian with legal and physical custody of the child; or

(c) Directing the child to be temporarily placed in the custody of the department for placement with a relative or other suitable person as defined in RCW 13.34.130(1)(b), if available, or in an appropriate licensed out-of-home placement, and directing that the department file a dependency petition on behalf of the child. [2010 c 272 § 7.]

13.36.080 Appointment of guardian ad litem or attorney for the child. In all proceedings to establish, modify, or terminate a guardianship order, the court shall appoint a guardian ad litem or attorney for the child. The court may appoint a guardian ad litem or attorney who represented the child in a prior proceeding under this chapter or under chapter 13.34 RCW, or may appoint an attorney to supersede an existing guardian ad litem. [2010 c 272 § 8.]

13.36.090 Guardianship subsidies—Relative guardianship subsidy—Rules—Licensed foster parent eligibility. (1) A relative guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a relative guardianship subsidy on behalf of the child. The department may establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines for expenditure of federal funds.

(2) Within amounts appropriated for this specific purpose, a guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a guardianship subsidy on behalf of the child. [2010 c 272 § 9.]

Chapter 13.38 RCW

INDIAN CHILD WELFARE ACT

Sections

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13.38.180	Placement preferences.
13.38.190	Review of cases—Standards and procedures—Compliance.

13.38.010 Short title. This chapter shall be known and cited as the "Washington state Indian child welfare act." [2011 c 309 § 1.]

13.38.020 Application. This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply. [2011 c 309 § 2.]

13.38.030 Findings and intent. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

It is the intent of the legislature that this chapter is a step in clarifying existing laws and codifying existing policies and practices. This chapter shall not be construed to reject or eliminate current policies and practices that are not included in its provisions.

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

It is also the legislature's intent that the department's policy manual on Indian child welfare, the tribal-state agreement, and relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian child welfare act, this chapter, and other relevant state laws. [2011 c 309 § 3.]

13.38.040 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to provide services to, or procure services for,

the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home place-

ment is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal court, or a state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of social and health services and any of its divisions. "Department" also includes supervising agencies as defined in *RCW 74.13.020(12) with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption. [2011 c 309 § 4.]

*Reviser's note: RCW 74.13.020 was amended by 2011 c 330 § 4, changing subsection (12) to subsection (13).

13.38.050 Determination of Indian status. Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by RCW 13.38.070. [2011 c 309 § 5.]

13.38.060 Jurisdiction. (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with RCW 13.38.140.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may

retain exclusive jurisdiction, notwithstanding the residence or domicile of the child. [2011 c 309 § 6.]

13.38.070 Notice—Procedures—Determination of Indian status. (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under RCW 13.38.070, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving by a preponderance of the evidence that the child is an Indian child.

(4)(a) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may, during the pendency of any child custody proceeding to which this chapter or the federal Indian child welfare act applies, move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

(b) This subsection (4) does not affect the rights afforded under 25 U.S.C. Sec. 1914. [2011 c 309 § 7.]

13.38.080 Transfer of jurisdiction. (1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

- (a) Either of the child's parents;
- (b) The child's Indian custodian;
- (c) The child's tribe; or
- (d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal-state agreement. [2011 c 309 § 8.]

13.38.090 Right to intervene. The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child. [2011 c 309 § 9.]

13.38.100 Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings. [2011 c 309 § 10.]

13.38.110 Right to counsel. In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for

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the Indian child upon a finding that the appointment is in the best interests of the Indian child. [2011 c 309 § 11.]

13.38.120 Right to examine reports, other documents. Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based. [2011 c 309 § 12.]

13.38.130 Involuntary foster care placement, termination of parental rights—Determination—Qualified expert witness. (1) A party seeking to effect an involuntary foster care placement of or the involuntary termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No involuntary foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No involuntary termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider shall not be the sole basis or primary reason for termination of parental rights over an Indian child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to RCW 13.38.090 or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may

proceed to identify such a witness pursuant to (b) of this subsection.

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. [2011 c 309 § 13.]

13.38.140 Emergency removal or placement of Indian child—Notice. (1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child

welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under RCW 13.38.070 for purposes of subsequent dependency, termination of parental rights, or adoption proceedings. [2011 c 309 § 14.]

13.38.150 Consent to foster care placement or termination of parental rights—Withdrawal.

(1) If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress. Upon a finding that such consent was obtained through fraud or duress the court shall vacate the decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under this section unless otherwise allowed by state law. [2011 c 309 § 15.]

13.38.160 Improper removal of Indian child. If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger. [2011 c 309 § 16.]

13.38.170 Removal of Indian child from adoptive or foster care placement. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. [2011 c 309 § 17.]

13.38.180 Placement preferences. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, a good faith effort will be made to place the Indian child:

- (a) In the least restrictive setting;
- (b) Which most approximates a family situation;
- (c) Which is in reasonable proximity to the Indian child’s home; and
- (d) In which the Indian child’s special needs, if any, will be met.

(2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child’s placement with one of the following:

- (a) A member of the child’s extended family;
- (b) A foster home licensed, approved, or specified by the child’s tribe;
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs;
- (e) A non-Indian child foster care agency approved by the child’s tribe;
- (f) A non-Indian family that is committed to:
- (i) Promoting and allowing appropriate extended family visitation;
- (ii) Establishing, maintaining, and strengthening the child’s relationship with his or her tribe or tribes; and
- (iii) Participating in the cultural and ceremonial events of the child’s tribe.

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- (a) Extended family members;
- (b) An Indian family of the same tribe as the child;
- (c) An Indian family that is of a similar culture to the child’s tribe;
- (d) Another Indian family; or
- (e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child’s tribe or, in proceedings under chapter 13.34 RCW where the Indian child is in the custody

of the department or a supervising agency and the Indian child’s tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child’s tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.

(5) Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(6) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent’s relationship to the child’s tribe. [2011 c 309 § 18.]

13.38.190 Review of cases—Standards and procedures—Compliance. (1) The department, in consultation with Indian tribes, shall establish standards and procedures for the department’s review of cases subject to this chapter and methods for monitoring the department’s compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department’s child welfare contracting and contract monitoring process.

(2) Nothing in this chapter shall affect, impair, or limit rights or remedies provided to any party under the federal Indian child welfare act, 25 U.S.C. Sec. 1914. [2011 c 309 § 19.]

**Chapter 13.40 RCW
JUVENILE JUSTICE ACT OF 1977**

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- 13.40.230 Appeal from order of disposition—Jurisdiction—Procedure—Scope—Release pending appeal.
- 13.40.240 Construction of RCW references to juvenile delinquents or juvenile delinquency.
- 13.40.250 Traffic and civil infraction cases.
- 13.40.265 Firearm, alcohol, and drug violations.
- 13.40.280 Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles.
- 13.40.285 Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement.
- 13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday.
- 13.40.305 Juvenile offender adjudicated of theft of motor vehicle, possession of stolen vehicle, taking motor vehicle without permission in the first degree, taking motor vehicle without permission in the second degree—Local sanctions—Evaluation.
- 13.40.308 Juvenile offender adjudicated of taking motor vehicle without permission in the first degree, theft of motor vehicle, possession of a stolen vehicle, taking motor vehicle without permission in the second degree—Minimum sentences.
- 13.40.310 Transitional treatment program for gang and drug-involved juvenile offenders.
- 13.40.320 Juvenile offender basic training camp program.
- 13.40.400 Applicability of RCW 10.01.040 to chapter.
- 13.40.430 Disparity in disposition of juvenile offenders—Data collection.
- 13.40.460 Juvenile rehabilitation programs—Administration.
- 13.40.462 Reinvesting in youth program.
- 13.40.464 Reinvesting in youth program—Guidelines.
- 13.40.466 Reinvesting in youth account.
- 13.40.468 Juvenile rehabilitation administration—State quality assurance program.
- 13.40.470 Vulnerable youth committed to residential facilities—Protection from sexually aggressive youth—Assessment process.
- 13.40.480 Student records and information—Reasons for release—Who may request.
- 13.40.500 Community juvenile accountability programs—Findings—Purpose.
- 13.40.510 Community juvenile accountability programs—Establishment—Proposals—Guidelines.
- 13.40.520 Community juvenile accountability programs—Grants.
- 13.40.530 Community juvenile accountability programs—Effectiveness standards.
- 13.40.540 Community juvenile accountability programs—Information collection—Report.
- 13.40.550 Community juvenile accountability programs—Short title.
- 13.40.560 Juvenile accountability incentive account.
- 13.40.570 Sexual misconduct by state employees, contractors.
- 13.40.580 Youth courts—Diversion.
- 13.40.590 Youth court programs.
- 13.40.600 Youth court jurisdiction.
- 13.40.610 Youth court notification of satisfaction of conditions.
- 13.40.620 Appearance before youth court with parent, guardian, or legal custodian.
- 13.40.630 Youth court dispositions.
- 13.40.640 Youth court nonrefundable fee.
- 13.40.650 Use of restraints on pregnant youth in custody—Allowed in extraordinary circumstances.
- 13.40.651 Use of restraints on pregnant youth in custody—Provision of information to staff and pregnant youth in custody.
- 13.40.700 Juvenile gang courts—Minimum requirements—Admission—Individualized plan—Completion.
- 13.40.710 Juvenile gang courts—Data—Reports.
- 13.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
- Health and dental examination and care for juveniles in detention facility—Consent: RCW 13.04.047.*
- Juvenile may be both dependent and an offender: RCW 13.04.300.*
- Treatment of juvenile offenders: RCW 74.14A.030, 74.14A.040.*

13.40.010 Short title—Intent—Purpose. (1) This chapter shall be known and cited as the Juvenile Justice Act of 1977.

(2) It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders and their victims, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, the legislature declares the following to be equally important purposes of this chapter:

(a) Protect the citizenry from criminal behavior;

- (b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;
- (c) Make the juvenile offender accountable for his or her criminal behavior;
- (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- (e) Provide due process for juveniles alleged to have committed an offense;
- (f) Provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
- (h) Provide for restitution to victims of crime;
- (i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels;
- (j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services;
- (k) Provide opportunities for victim participation in juvenile justice process, including court hearings on juvenile offender matters, and ensure that Article I, section 35 of the Washington state Constitution, the victim bill of rights, is fully observed; and
- (l) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process. [2004 c 120 § 1; 1997 c 338 § 8; 1992 c 205 § 101; 1977 ex.s. c 291 § 55.]

Effective date—2004 c 120: "This act takes effect July 1, 2004." [2004 c 120 § 11.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.020 Definitions. For the purposes of this chapter:

- (1) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;
- (2) "Community-based sanctions" may include one or more of the following:
 - (a) A fine, not to exceed five hundred dollars;
 - (b) Community restitution not to exceed one hundred fifty hours of community restitution;
- (3) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community restitution may be performed through public or private organizations or through work crews;
- (4) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for

a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

- (a) Community-based sanctions;
- (b) Community-based rehabilitation;
- (c) Monitoring and reporting requirements;
- (d) Posting of a probation bond;
- (5) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;
- (6) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);
- (7) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

- (a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or
- (b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;
- (8) "Department" means the department of social and health services;
- (9) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;
- (10) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, youth court under the supervision of the juvenile court, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to

arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(11) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(12) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(13) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110, unless the individual was convicted of a lesser charge or acquitted of the charge for which he or she was previously transferred pursuant to RCW 13.40.110 or who is not otherwise under adult court jurisdiction;

(15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(16) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(17) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

(18) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(19) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(20) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under

any federal law, or under the law of another state if the act occurred in that state;

(21) "Physical restraint" means the use of any bodily force or physical intervention to control a juvenile offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another;

(22) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic;

(23) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(24) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(25) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(26) "Restorative justice" means practices, policies, and programs informed by and sensitive to the needs of crime victims that are designed to encourage offenders to accept responsibility for repairing the harm caused by their offense by providing safe and supportive opportunities for voluntary participation and communication between the victim, the offender, their families, and relevant community members;

(27) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons;

(28) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(29) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or

been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(30) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(31) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(32) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(33) "Transportation" means the conveying, by any means, of an incarcerated pregnant youth from the institution or detention facility to another location from the moment she leaves the institution or detention facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated youth from the institution or detention facility to a transport vehicle and from the vehicle to the other location;

(34) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(35) "Violent offense" means a violent offense as defined in RCW 9.94A.030;

(36) "Youth court" means a diversion unit under the supervision of the juvenile court. [2012 c 201 § 1; 2010 c 181 § 10; 2009 c 454 § 2; 2004 c 120 § 2. Prior: 2002 c 237 § 7; 2002 c 175 § 19; 1997 c 338 § 10; (1997 c 338 § 9 expired July 1, 1998); prior: 1995 c 395 § 2; 1995 c 134 § 1; prior: 1994 sp.s. c 7 § 520; 1994 c 271 § 803; 1994 c 261 § 18; 1993 c 373 § 1; 1990 1st ex.s. c 12 § 1; 1990 c 3 § 301; 1989 c 407 § 1; 1988 c 145 § 17; 1983 c 191 § 7; 1981 c 299 § 2; 1979 c 155 § 54; 1977 ex.s. c 291 § 56.]

Effective date—2004 c 120: See note following RCW 13.40.010.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Additional notes found at www.leg.wa.gov

13.40.030 Security guidelines—Legislative review—Limitations on permissible ranges of confinement. (1) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each year. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) The permissible ranges of confinement resulting from a finding of manifest injustice under RCW 13.40.0357 are subject to the following limitations:

(2012 Ed.)

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range. [2003 c 207 § 5; 1996 c 232 § 5; 1989 c 407 § 3; 1985 c 73 § 1; 1983 c 191 § 6; 1981 c 299 § 5; 1979 c 155 § 55; 1977 ex.s. c 291 § 57.]

Additional notes found at www.leg.wa.gov

13.40.0351 Equal application of guidelines and standards. The sentencing guidelines and prosecuting standards apply equally to juvenile offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the offender. [1989 c 407 § 5.]

13.40.0357 Juvenile offender sentencing standards.

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+
Burglary and Trespass		
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E

D	Criminal Trespass 1 (9A.52.070)	E	C+	Unlawful Imprisonment (9A.40.040)	D+
E	Criminal Trespass 2 (9A.52.080)	E		Obstructing Governmental Operation	
C	Mineral Trespass (78.44.330)	C	D	Obstructing a Law Enforcement Officer (9A.76.020)	E
C	Vehicle Prowling 1 (9A.52.095)	D	E	Resisting Arrest (9A.76.040)	E
D	Vehicle Prowling 2 (9A.52.100)	E	B	Introducing Contraband 1 (9A.76.140)	C
	Drugs		C	Introducing Contraband 2 (9A.76.150)	D
E	Possession/Consumption of Alcohol (66.44.270)	E	E	Introducing Contraband 3 (9A.76.160)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D	B+	Intimidating a Public Servant (9A.76.180)	C+
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D+	B+	Intimidating a Witness (9A.72.110)	C+
E	Possession of Legend Drug (69.41.030(2)(b))	E		Public Disturbance	
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+	C+	Riot with Weapon (9A.84.010(2)(b))	D+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C	D+	Riot Without Weapon (9A.84.010(2)(a))	E
E	Possession of Marihuana <40 grams (69.50.4014)	E	E	Failure to Disperse (9A.84.020)	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C	E	Disorderly Conduct (9A.84.030)	E
C+	Sale of Controlled Substance for Profit (69.50.410)	C+		Sex Crimes	
E	Unlawful Inhalation (9.47A.020)	E	A	Rape 1 (9A.44.040)	B+
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B	A-	Rape 2 (9A.44.050)	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C	C+	Rape 3 (9A.44.060)	D+
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C	A-	Rape of a Child 1 (9A.44.073)	B+
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C	B+	Rape of a Child 2 (9A.44.076)	C+
	Firearms and Weapons		B	Incest 1 (9A.64.020(1))	C
B	Theft of Firearm (9A.56.300)	C	C	Incest 2 (9A.64.020(2))	D
B	Possession of Stolen Firearm (9A.56.310)	C	D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Carrying Loaded Pistol Without Permit (9.41.050)	E	E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)(iii))	C	B+	Promoting Prostitution 1 (9A.88.070)	C+
D+	Possession of Dangerous Weapon (9.41.250)	E	C+	Promoting Prostitution 2 (9A.88.080)	D+
D	Intimidating Another Person by use of Weapon (9.41.270)	E	E	O & A (Prostitution) (9A.88.030)	E
	Homicide		B+	Indecent Liberties (9A.44.100)	C+
A+	Murder 1 (9A.32.030)	A	A-	Child Molestation 1 (9A.44.083)	B+
A+	Murder 2 (9A.32.050)	B+	B	Child Molestation 2 (9A.44.086)	C+
B+	Manslaughter 1 (9A.32.060)	C+	C	Failure to Register as a Sex Offender (9A.44.132)	D
C+	Manslaughter 2 (9A.32.070)	D+		Theft, Robbery, Extortion, and Forgery	
B+	Vehicular Homicide (46.61.520)	C+	B	Theft 1 (9A.56.030)	C
	Kidnapping		C	Theft 2 (9A.56.040)	D
A	Kidnap 1 (9A.40.020)	B+	D	Theft 3 (9A.56.050)	E
B+	Kidnap 2 (9A.40.030)	C+	B	Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C
			C	Forgery (9A.60.020)	D
			A	Robbery 1 (9A.56.200)	B+
			B+	Robbery 2 (9A.56.210)	C+
			B+	Extortion 1 (9A.56.120)	C+
			C+	Extortion 2 (9A.56.130)	D+
			C	Identity Theft 1 (9.35.020(2))	D
			D	Identity Theft 2 (9.35.020(3))	E
			D	Improperly Obtaining Financial Information (9.35.010)	E
			B	Possession of a Stolen Vehicle (9A.56.068)	C
			B	Possession of Stolen Property 1 (9A.56.150)	C
			C	Possession of Stolen Property 2 (9A.56.160)	D
			D	Possession of Stolen Property 3 (9A.56.170)	E
			B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
			C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
			B	Theft of a Motor Vehicle (9A.56.065)	C

Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.005)
B+	Hit and Run - Death (46.52.020(4)(a))
C	Hit and Run - Injury (46.52.020(4)(b))
D	Hit and Run-Attended (46.52.020(5))
E	Hit and Run-Unattended (46.52.010)
C	Vehicular Assault (46.61.522)
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)
E	Reckless Driving (46.61.500)
D	Driving While Under the Influence (46.61.502 and 46.61.504)
B+	Felony Driving While Under the Influence (46.61.502(6))
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))
Other	
B	Animal Cruelty 1 (16.52.205)
B	Bomb Threat (9.61.160)
C	Escape 1 ¹ (9A.76.110)
C	Escape 2 ¹ (9A.76.120)
D	Escape 3 (9A.76.130)
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)
A	Other Offense Equivalent to an Adult Class A Felony
B	Other Offense Equivalent to an Adult Class B Felony

C	Other Offense Equivalent to an Adult Class C Felony
D	Other Offense Equivalent to an Adult Gross Misdemeanor
E	Other Offense Equivalent to an Adult Misdemeanor
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

- 1st escape or attempted escape during 12-month period - 4 weeks confinement
- 2nd escape or attempted escape during 12-month period - 8 weeks confinement
- 3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	15-36 weeks Except 30-40 weeks for 15 to 17 year olds	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
CURRENT	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
OFFENSE	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
CATEGORY	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
		0	1	2	3	4 or more

PRIOR ADJUDICATIONS

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060);

or

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular

homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

**OPTION C
CHEMICAL DEPENDENCY
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

**OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2). [2012 c 177 § 4. Prior: 2008 c 230 § 3; 2008 c 158 § 1; 2007 c 199 § 11; 2006 c 73 § 14; 2004 c 117 § 1; prior: 2003 c 378 § 2; 2003 c 335 § 6; 2003 c 53 § 97; prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

Delayed effective date—2008 c 230 §§ 1-3: See note following RCW 9A.44.130.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2004 c 117: "This act takes effect July 1, 2004." [2004 c 117 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: "The legislature finds it critical to evaluate the effectiveness of the revisions made in this act to juvenile sentencing for purposes of measuring improvements in public safety and reduction of recidivism.

To accomplish this evaluation, the Washington state institute for public policy shall conduct a study of the sentencing revisions. The study shall: (1) Be conducted starting January 1, 2001; (2) examine whether the revisions have affected the rate of initial offense commission and recidivism; (3) determine the impacts of the revisions by age, race, and gender impacts of the revisions; (4) compare the utilization and effectiveness of sentencing alternatives and manifest injustice determinations before and after the revisions; and (5) examine the impact and effectiveness of changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders.

The institute shall report the results of the study to the governor and legislature not later than July 1, 2002." [1997 c 338 § 59.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.038 County juvenile detention facilities—Policy—Detention and risk assessment standards. (1) It is the policy of this state that all county juvenile detention facilities provide a humane, safe, and rehabilitative environment and that adjudicated youth remain in the community whenever possible, consistent with public safety and the provisions of chapter 13.40 RCW.

(2) The counties shall develop and implement detention intake standards and risk assessment standards to determine whether detention is warranted, whether the juvenile is developmentally disabled, and if detention is warranted, whether the juvenile should be placed in secure, nonsecure, or home detention to implement the goals of this section.

(3) Inability to pay for a less restrictive detention placement shall not be a basis for denying a respondent a less restrictive placement in the community.

(4) The assessment standards to determine whether a juvenile entering detention is developmentally disabled must be developed and implemented no later than December 31, 2012. [2012 c 120 § 1; 1992 c 205 § 105; 1986 c 288 § 7.]

Additional notes found at www.leg.wa.gov

13.40.040 Taking juvenile into custody, grounds—Detention of, grounds—Detention pending disposition—Release on bond, conditions—Bail jumping. (1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(2012 Ed.)

(3) Notwithstanding subsection (2) of this section, and within available funds, a juvenile who has been found guilty of one of the following offenses shall be detained pending disposition: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); or rape of a child in the first degree (RCW 9A.44.073).

(4) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(5) Except as provided in RCW 9.41.280, a juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of social and health services. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping. [2002 c 171 § 2; 1999 c 167 § 2; 1997 c 338 § 13; 1995 c 395 § 4; 1979 c 155 § 57; 1977 ex.s. c 291 § 58.]

Effective date—2002 c 171: See note following RCW 72.01.410.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.045 Escapees—Arrest warrants. The secretary, assistant secretary, or the secretary's designee shall issue arrest warrants for juveniles who escape from department residential custody. The secretary, assistant secretary, or the secretary's designee may issue arrest warrants for juveniles who abscond from parole supervision or fail to meet conditions of parole. These arrest warrants shall authorize any law enforcement, probation and parole, or peace officer of this state, or any other state where the juvenile is located, to arrest the juvenile and to place the juvenile in physical custody pending the juvenile's return to confinement in a state juvenile rehabilitation facility. [1997 c 338 § 14; 1994 sp.s. c 7 § 518.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.050 Detention procedures—Notice of hearing—Conditions of release—Consultation with parent, guardian, or custodian. (1) When a juvenile taken into custody is held in detention:

(a) An information, a community supervision modification or termination of diversion petition, or a parole modification petition shall be filed within seventy-two hours, Saturdays, Sundays, and holidays excluded, or the juvenile shall be released; and

(b) A detention hearing, a community supervision modification or termination of diversion petition, or a parole modification petition shall be held within seventy-two hours, Saturdays, Sundays, and holidays excluded, from the time of filing the information or petition, to determine whether continued detention is necessary under RCW 13.40.040.

(2) Notice of the detention hearing, stating the time, place, and purpose of the hearing, stating the right to counsel, and requiring attendance shall be given to the parent, guardian, or custodian if such person can be found and shall also be given to the juvenile if over twelve years of age.

(3) At the commencement of the detention hearing, the court shall advise the parties of their rights under this chapter and shall appoint counsel as specified in this chapter.

(4) The court shall, based upon the allegations in the information, determine whether the case is properly before it or whether the case should be treated as a diversion case under RCW 13.40.080. If the case is not properly before the court the juvenile shall be ordered released.

(5) Notwithstanding a determination that the case is properly before the court and that probable cause exists, a juvenile shall at the detention hearing be ordered released on the juvenile's personal recognizance pending further hearing unless the court finds detention is necessary under RCW 13.40.040.

(6) If detention is not necessary under RCW 13.40.040, the court shall impose the most appropriate of the following conditions or, if necessary, any combination of the following conditions:

(a) Place the juvenile in the custody of a designated person agreeing to supervise such juvenile;

(b) Place restrictions on the travel of the juvenile during the period of release;

(c) Require the juvenile to report regularly to and remain under the supervision of the juvenile court;

(d) Impose any condition other than detention deemed reasonably necessary to assure appearance as required;

(e) Require that the juvenile return to detention during specified hours; or

(f) Require the juvenile to post a probation bond set by the court under terms and conditions as provided in *RCW 13.40.040(4).

(7) A juvenile may be released only to a responsible adult or the department.

(8) If the parent, guardian, or custodian of the juvenile in detention is available, the court shall consult with them prior to a determination to further detain or release the juvenile or treat the case as a diversion case under RCW 13.40.080.

(9) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reason-

able cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned. [1997 c 338 § 15; 1995 c 395 § 5; 1992 c 205 § 106; 1979 c 155 § 58; 1977 ex.s. c 291 § 59.]

***Reviser's note:** RCW 13.40.040 was amended by 2002 c 171 § 2, changing subsection (4) to subsection (5).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.054 Probation bond or collateral—Modification or revocation of probation bond. (1) As provided in this chapter, the court may order a juvenile to post a probation bond as defined in RCW 13.40.020 or to deposit cash or post other collateral in lieu of a probation bond, to enhance public safety, increase the likelihood that a respondent will appear as required to respond to charges, and increase compliance with community supervision imposed under various alternative disposition options. The parents or guardians of the juvenile may sign for a probation bond on behalf of the juvenile or deposit cash or other collateral in lieu of a bond if approved by the court.

(2) A parent or guardian who has signed for a probation bond, deposited cash, or posted other collateral on behalf of a juvenile has the right to notify the court if the juvenile violates any of the terms and conditions of the bond. The parent or guardian who signed for a probation bond may move the court to modify the terms of the bond or revoke the bond without penalty to the surety or parent. The court shall notify the surety if a parent or guardian notifies the court that the juvenile has violated conditions of the probation bond and has requested modification or revocation of the bond. At a hearing on the motion, the court may consider the nature and seriousness of the violation or violations and may either keep the bond in effect, modify the terms of the bond with the consent of the parent or guardian and surety, or revoke the bond. If the court revokes the bond the court may require full payment of the face amount of the bond. In the alternative, the court may revoke the bond and impose a partial payment for less than the full amount of the bond or may revoke the bond without imposing any penalty. In reaching its decision, the court may consider the timeliness of the parent's or guardian's notification to the court and the efforts of the parent and surety to monitor the offender's compliance with conditions of the bond and release. A surety shall have the same obligations and rights as provided sureties in adult criminal cases. Rules of forfeiture and revocation of bonds issued in adult criminal cases shall apply to forfeiture and revocation of probation bonds issued under this chapter except as specifically provided in this subsection. [1995 c 395 § 1.]

13.40.056 Nonrefundable bail fee. When a juvenile charged with an offense posts a probation bond or deposits cash or posts other collateral in lieu of a bond, ten dollars of the total amount required to be posted as bail shall be paid in cash as a nonrefundable bail fee. The bail fee shall be distributed to the county for costs associated with implementing chapter 395, Laws of 1995. [1995 c 395 § 9.]

13.40.060 Jurisdiction of actions—Transfer of case and records, when—Change in venue, grounds. (1) All

actions under this chapter shall be commenced and tried in the county where any element of the offense was committed except as otherwise specially provided by statute. In cases in which diversion is provided by statute, venue is in the county in which the juvenile resides or in the county in which any element of the offense was committed.

(2)(a) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when there is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun; and

(b) A court may transfer a proceeding to another juvenile court following disposition for the purposes of supervision and enforcement of the disposition order.

(3) If the court orders a transfer of the proceeding pursuant to subsection (2)(b) of this section:

(a) The case and copies of only those legal and social documents pertaining thereto shall be transferred to the county in which the juvenile resides, without regard to whether or not his or her custodial parent resides there, for supervision and enforcement of the disposition order.

(b) If any restitution is yet to be determined, the originating court shall transfer the case to the new county with the exception of the restitution. Venue over restitution shall be retained by the originating court for purposes of establishing a restitution order. Once restitution is determined, the originating county shall then transfer venue over modification and enforcement of the restitution to the new county.

(c) The court of the receiving county may modify and enforce the disposition order, including restitution.

(d) The clerk of the originating county shall maintain the account receivable in the judicial information system and all payments shall be made to the clerk of the originating county.

(e) Any collection of the offender legal financial obligation shall be managed by the juvenile probation department of the new county while the offender is under juvenile probation supervision, or by the clerk of the original county at the conclusion of supervision by juvenile probation. The probation department of the new county shall notify the clerk of the originating county when they end supervision of the offender.

(f) In cases where a civil judgment has already been established, venue may not be transferred to another county. [2005 c 165 § 1; 1997 c 338 § 16; 1989 c 71 § 1; 1981 c 299 § 6; 1979 c 155 § 59; 1977 ex.s. c 291 § 60.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [2010 c 289 § 7; 2009 c 252 § 3; 2003 c 53 § 98; 2001 c 175 § 2; 1997 c 338 § 17; 1994 sp.s. c 7 § 543; 1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Findings—2009 c 252: See note following RCW 13.40.213.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.077 Recommended prosecuting standards for charging and plea dispositions.

RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS

INTRODUCTION: These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

Evidentiary sufficiency.

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law. The decision not to prosecute or divert shall not be influenced by the race, gender, religion, or creed of the suspect.

GUIDELINES/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions

would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years;

(ii) Most members of society act as if it were no longer in existence;

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. The reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be proved under *RCW 13.40.160(4).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

The categorization of crimes for these charging standards shall be the same as found in RCW 9.94A.411(2).

The decision to prosecute or use diversion shall not be influenced by the race, gender, religion, or creed of the respondent.

(3) Selection of Charges/Degree of Charge

(a) The prosecutor should file charges which adequately describe the nature of the respondent's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(i) Will significantly enhance the strength of the state's case at trial; or

(ii) Will result in restitution to all victims.

(b) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(i) Charging a higher degree;

(ii) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a respondent's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(4) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(a) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(b) The completion of necessary laboratory tests; and

(c) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(5) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(a) Probable cause exists to believe the suspect is guilty; and

(b) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(c) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(6) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(a) Polygraph testing;

(b) Hypnosis;

(c) Electronic surveillance;

(d) Use of informants.

(7) Prefiling Discussions with Defendant

Discussions with the defendant or his or her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(8) Plea dispositions:

STANDARD

(a) Except as provided in subsection (2) of this section, a respondent will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(b) In certain circumstances, a plea agreement with a respondent in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

(i) Evidentiary problems which make conviction of the original charges doubtful;

(ii) The respondent's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(iii) A request by the victim when it is not the result of pressure from the respondent;

(iv) The discovery of facts which mitigate the seriousness of the respondent's conduct;

(v) The correction of errors in the initial charging decision;

(vi) The respondent's history with respect to criminal activity;

(vii) The nature and seriousness of the offense or offenses charged;

(viii) The probable effect of witnesses.

(c) No plea agreement shall be influenced by the race, gender, religion, or creed of the respondent. This includes but is not limited to the prosecutor's decision to utilize such disposition alternatives as the Special Sex Offender Disposition Alternative, the Chemical Dependency Disposition Alternative, and manifest injustice.

(9) Disposition recommendations:

STANDARD

The prosecutor may reach an agreement regarding disposition recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1997 c 338 § 18; 1996 c 9 § 1.]

***Reviser's note:** RCW 13.40.160 was amended by 1999 c 91 § 2, changing subsection (4) to subsection (3). RCW 13.40.160 was subsequently amended by 2011 c 338 § 2, deleting subsection (3).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.080 Diversion agreement—Scope—Limitations—Restitution orders—Divertee's rights—Diversion unit's powers and duties—Interpreters—Modification—Fines. (1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community restitution not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by any victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversion unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars;

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of any victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) Notwithstanding the provisions of subsection (2) of this section, youth courts are not limited to the conditions imposed by subsection (2) of this section in imposing sanctions on juveniles pursuant to RCW 13.40.630.

(4) In assessing periods of community restitution to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian. To the extent possible, the court officer shall advise the victims of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(5)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.

(b) If additional time is necessary for the juvenile to complete restitution to a victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (5)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may relieve the juvenile of the requirement to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. If the court relieves the juvenile of the requirement to pay full or partial restitution, the court may order an amount of community restitution that the court deems appropriate. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(6) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(7) Divertees and potential divertees shall be afforded due process in all contacts with a diversion unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(8) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(9) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(10) The diversion unit may refer a juvenile to a restorative justice program, community-based counseling, or treatment programs.

(11) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversion unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(12) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

(a) The fact that a charge or charges were made;

(b) The fact that a diversion agreement was entered into;

(c) The juvenile's obligations under such agreement;

(d) Whether the alleged offender performed his or her obligations under such agreement; and

(e) The facts of the alleged offense.

(13) A diversion unit may refuse to enter into a diversion agreement with a juvenile. When a diversion unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversion unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(14) A diversion unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection includes the authority to refer the juvenile to community-based counseling or treatment programs or a restorative justice program. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversion unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(15) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(16) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community restitution. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community restitution in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(17) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall

be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section. [2012 c 201 § 2; 2004 c 120 § 3. Prior: 2002 c 237 § 8; 2002 c 175 § 21; 1999 c 91 § 1; 1997 c 338 § 70; 1997 c 121 § 8; 1996 c 124 § 1; 1994 sp.s. c 7 § 544; 1992 c 205 § 108; 1985 c 73 § 2; 1983 c 191 § 16; 1981 c 299 § 8; 1979 c 155 § 61; 1977 ex.s. c 291 § 62.]

Effective date—2004 c 120: See note following RCW 13.40.010.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.085 Diversion services costs—Fees—Payment by parent or legal guardian. The county legislative authority may authorize juvenile court administrators to establish fees to cover the costs of the administration and operation of diversion services provided under this chapter. The parent or legal guardian of a juvenile who receives diversion services must pay for the services based on the parent's or guardian's ability to pay. The juvenile court administrators shall develop a fair and equitable payment schedule. No juvenile who is eligible for diversion as provided in this chapter may be denied diversion services based on an inability to pay for the services. [1993 c 171 § 1.]

13.40.087 Youth who have been diverted—Alleged prostitution or prostitution loitering offenses—Services and treatment. Within available funding, when a youth who has been diverted under RCW 13.40.070 for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that youth with the services and treatment specified in RCW *74.14B.060 and 74.14B.070. [2010 c 289 § 5.]

*Reviser's note: RCW 74.14B.060 was repealed by 2012 c 29 § 14.

13.40.090 Prosecuting attorney as party to juvenile court proceedings—Exception, procedure. The county prosecuting attorney shall be a party to all juvenile court proceedings involving juvenile offenders or alleged juvenile offenders.

The prosecuting attorney may, after giving appropriate notice to the juvenile court, decline to represent the state of Washington in juvenile court matters except felonies unless requested by the court on an individual basis to represent the state at an adjudicatory hearing in which case he or she shall participate. When the prosecutor declines to represent the state, then such function may be performed by the juvenile court probation counselor authorized by the court or local court rule to serve as the prosecuting authority.

If the prosecuting attorney elects not to participate, the prosecuting attorney shall file with the county clerk each year by the first Monday in July notice of intent not to participate. In a county wherein the prosecuting attorney has elected not to participate in juvenile court, he or she shall not thereafter until the next filing date participate in juvenile court proceedings unless so requested by the court on an individual basis, in which case the prosecuting attorney shall participate. [1977 ex.s. c 291 § 63.]

13.40.100 Summons or other notification issued upon filing of information—Procedure—Order to take juvenile into custody—Contempt of court, when. (1) Upon the filing of an information the alleged offender shall be notified by summons, warrant, or other method approved by the court of the next required court appearance.

(2) If notice is by summons, the clerk of the court shall issue a summons directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons.

(3) A copy of the information shall be attached to each summons.

(4) The summons shall advise the parties of the right to counsel.

(5) The judge may endorse upon the summons an order directing the parents, guardian, or custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the juvenile needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the juvenile into custody and take the juvenile to the place of detention or shelter designated by the court.

(7) Service of summons may be made under the direction of the court by any law enforcement officer or probation counselor.

(8) If the person summoned as herein provided fails without reasonable cause to appear and abide the order of the court, the person may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned. [1997 c 338 § 19; 1979 c 155 § 62; 1977 ex.s. c 291 § 64.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.110 Hearing on question of declining jurisdiction—Held, when—Findings. (1) Discretionary decline hearing - The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction.

(2) Mandatory decline hearing - Unless waived by the court, the parties, and their counsel, a decline hearing shall be held when:

(a) The respondent is sixteen or seventeen years of age and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree; or

(c) The information alleges an escape by the respondent and the respondent is serving a minimum juvenile sentence to age twenty-one.

(3) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(4) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing. [2009 c 454 § 3; 1997 c 338 § 20; 1990 c 3 § 303; 1988 c 145 § 18; 1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.120 Hearings—Time and place. All hearings may be conducted at any time or place within the limits of the judicial district, and such cases may not be heard in conjunction with other business of any other division of the superior court. [1981 c 299 § 9; 1979 c 155 § 64; 1977 ex.s. c 291 § 66.]

Additional notes found at www.leg.wa.gov

13.40.127 Deferred disposition. (1) A juvenile is eligible for deferred disposition unless he or she:

- (a) Is charged with a sex or violent offense;
- (b) Has a criminal history which includes any felony;
- (c) Has a prior deferred disposition or deferred adjudication; or
- (d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile’s custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition. The court may waive the fourteen-day period anytime before the commencement of trial for good cause.

(3) Any juvenile who agrees to a deferral of disposition shall:

- (a) Stipulate to the admissibility of the facts contained in the written police report;
- (b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision;
- (c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses; and
- (d) Acknowledge the direct consequences of being found guilty and the direct consequences that will happen if an order of disposition is entered.

The adjudicatory hearing shall be limited to a reading of the court’s record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile’s failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7)(a) Anytime prior to the conclusion of the period of supervision, the prosecutor or the juvenile’s juvenile court community supervision counselor may file a motion with the court requesting the court revoke the deferred disposition based on the juvenile’s lack of compliance or treat the juvenile’s lack of compliance as a violation pursuant to RCW 13.40.200.

(b) If the court finds the juvenile failed to comply with the terms of the deferred disposition, the court may:

- (i) Revoke the deferred disposition and enter an order of disposition; or
- (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

(8) At any time following deferral of disposition the court may, following a hearing, continue supervision for an additional one-year period for good cause.

(9)(a) At the conclusion of the period of supervision, the court shall determine whether the juvenile is entitled to dismissal of the deferred disposition only when the court finds:

- (i) The deferred disposition has not been previously revoked;
- (ii) The juvenile has completed the terms of supervision;
- (iii) There are no pending motions concerning lack of compliance pursuant to subsection (7) of this section; and
- (iv) The juvenile has either paid the full amount of restitution, or, made a good faith effort to pay the full amount of restitution during the period of supervision.

(b) If the court finds the juvenile is entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the juvenile’s conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated. Whenever a case is dismissed with restitution still owing, the court shall enter

a restitution order pursuant to RCW 13.40.190 for any unpaid restitution. Jurisdiction to enforce payment and modify terms of the restitution order shall be the same as those set forth in RCW 13.40.190.

(c) If the court finds the juvenile is not entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the court shall revoke the deferred disposition and enter an order of disposition. A deferred disposition shall remain a conviction unless the case is dismissed and the conviction is vacated pursuant to (b) of this subsection or sealed pursuant to RCW 13.50.050.

(10)(a)(i) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is eighteen years of age or older and the full amount of restitution ordered has been paid, the court shall enter a written order sealing the case.

(ii) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is not eighteen years of age or older and full restitution ordered has been paid, the court shall schedule an administrative sealing hearing to take place no later than thirty days after the respondent's eighteenth birthday, at which time the court shall enter a written order sealing the case. The respondent's presence at the administrative sealing hearing is not required.

(iii) Any deferred disposition vacated prior to June 7, 2012, is not subject to sealing under this subsection.

(b) Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(c) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050. [2012 c 177 § 1; 2009 c 236 § 1; 2004 c 117 § 2; 2001 c 175 § 3; 1997 c 338 § 21.]

Effective date—2004 c 117: See note following RCW 13.40.0357.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.130 Procedure upon plea of guilty or not guilty to information allegations—Notice—Adjudicatory and disposition hearing—Disposition standards used in sentencing. (1) The respondent shall be advised of the allegations in the information and shall be required to plead guilty or not guilty to the allegation(s). The state or the respondent may make preliminary motions up to the time of the plea.

(2) If the respondent pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing. If the respondent denies guilt, an adjudicatory hearing date shall be set. The court shall notify the parent, guardian, or custodian who has custody of a juvenile described in the charging document of the dispositional or adjudicatory hearing and shall require attendance.

(3) At the adjudicatory hearing it shall be the burden of the prosecution to prove the allegations of the information beyond a reasonable doubt.

(4) The court shall record its findings of fact and shall enter its decision upon the record. Such findings shall set forth the evidence relied upon by the court in reaching its decision.

(5) If the respondent is found not guilty he or she shall be released from detention.

(6) If the respondent is found guilty the court may immediately proceed to disposition or may continue the case for a dispositional hearing. Notice of the time and place of the continued hearing may be given in open court. If notice is not given in open court to a party, the party and the parent, guardian, or custodian who has custody of the juvenile shall be notified by mail of the time and place of the continued hearing.

(7) The court following an adjudicatory hearing may request that a predisposition study be prepared to aid the court in its evaluation of the matters relevant to disposition of the case.

(8) The disposition hearing shall be held within fourteen days after the adjudicatory hearing or plea of guilty unless good cause is shown for further delay, or within twenty-one days if the juvenile is not held in a detention facility, unless good cause is shown for further delay.

(9) In sentencing an offender, the court shall use the disposition standards in effect on the date of the offense.

(10) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned. [1997 c 338 § 22; 1981 c 299 § 10; 1979 c 155 § 65; 1977 ex.s. c 291 § 67.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.135 Sexual motivation special allegation—Procedures. (1) The prosecuting attorney shall file a special allegation of sexual motivation in every juvenile offense other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a juvenile case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the juvenile committed the offense with a sexual motivation. The court shall make a finding of fact of whether or not the sexual motivation was present at the time of the commission of the offense. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030.

(3) The prosecuting attorney shall not withdraw the special allegation of "sexual motivation" without approval of the court through an order of dismissal. The court shall not dismiss the special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [2009 c 28 § 33; 1997 c 338 § 23; 1990 c 3 § 604.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.140 Juveniles entitled to usual judicial rights—Notice of—Open court—Privilege against self-incrimination—Waiver of rights, when. (1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

(3) The right to counsel includes the right to the appointment of experts necessary, and the experts shall be required pursuant to the procedures and requirements established by the supreme court.

(4) Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing, or such subpoenas may be issued by an attorney of record.

(5) All proceedings shall be transcribed verbatim by means which will provide an accurate record.

(6) The general public and press shall be permitted to attend any hearing unless the court, for good cause, orders a particular hearing to be closed. The presumption shall be that all such hearings will be open.

(7) In all adjudicatory proceedings before the court, all parties shall have the right to adequate notice, discovery as provided in criminal cases, opportunity to be heard, confrontation of witnesses except in such cases as this chapter expressly permits the use of hearsay testimony, findings based solely upon the evidence adduced at the hearing, and an unbiased fact finder.

(8) A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence at an adjudicatory hearing over objection. Evidence illegally seized or obtained may not be received in evidence over objection at an adjudicatory hearing to prove the allegations against the juvenile if the evidence would be inadmissible in an adult criminal proceeding. An extrajudicial admission or confession made by the juvenile out of court is insufficient to support a finding that the juvenile committed the acts alleged in the information unless evidence of a corpus delicti is first independently established in the same manner as required in an adult criminal proceeding.

(9) Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.

(10) Whenever this chapter refers to waiver or objection by a juvenile, the word juvenile shall be construed to refer to a juvenile who is at least twelve years of age. If a juvenile is under twelve years of age, the juvenile's parent, guardian, or custodian shall give any waiver or offer any objection contemplated by this chapter. [1981 c 299 § 11; 1979 c 155 § 66; 1977 ex.s. c 291 § 68.]

Additional notes found at www.leg.wa.gov

13.40.145 Payment of fees for legal services by publicly funded counsel—Hearing—Order or decree—Entering and enforcing judgments. Upon disposition or at the time of a modification or at the time an appellate court remands the case to the trial court following a ruling in favor of the state the court may order the juvenile or a parent or another person legally obligated to support the juvenile to appear, and the court may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel and the costs incurred by the public in producing a verbatim report of proceedings and clerk's papers for use in the appellate courts.

If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees and costs incurred on appeal, the court may enter such order or decree as is equitable and may enforce the order or decree by execution, or in any way in which a court of equity may enforce its decrees.

In no event may the court order an amount to be paid for attorneys' fees that exceeds the average per case fee allocation for juvenile proceedings in the county where the services have been provided or the average per case fee allocation for juvenile appeals established by the Washington supreme court.

In any case in which there is no compliance with an order or decree of the court requiring a juvenile, parent, or other person legally obligated to support the juvenile to pay for legal services provided by publicly funded counsel, the court may, upon such person or persons being properly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order or decree and enter judgment for that amount against the defaulting party or parties. Judgment shall be docketed in the same manner as are other judgments for the payment of money.

The county in which such judgments are entered shall be denominated the judgment creditor, and the judgments may be enforced by the prosecuting attorney of that county. Any moneys recovered thereon shall be paid into the registry of the court and shall be disbursed to such person, persons, agency, or governmental entity as the court finds entitled thereto.

Such judgments shall remain valid and enforceable for a period of ten years subsequent to entry.

When the juvenile reaches the age of eighteen or at the conclusion of juvenile court jurisdiction, whichever occurs later, the superior court clerk must docket the remaining balance of the juvenile's legal financial obligations in the same manner as other judgments for the payment of money. The judgment remains valid and enforceable until ten years from the date of its imposition. The clerk of superior court may seek extension of the judgment for legal financial obligations,

including crime victims' assessments, in the same manner as RCW 6.17.020 for purposes of collection as allowed under RCW 36.18.190. [1997 c 121 § 6; 1995 c 275 § 4; 1984 c 86 § 1.]

Finding—Severability—1995 c 275: See notes following RCW 10.73.150.

13.40.150 Disposition hearing—Scope—Factors to be considered prior to entry of dispositional order. (1) In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

(a) Violations which are current offenses count as misdemeanors;

(b) Violations may not count as part of the offender's criminal history;

(c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any, or set a hearing for a later date not to exceed one hundred eighty days from the date of the disposition hearing to determine the amount, except that the court may continue the hearing beyond the one hundred eighty days for good cause;

(g) Determine the respondent's offender score;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

(i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

(ii) The offense was committed in an especially heinous, cruel, or depraved manner;

(iii) The victim or victims were particularly vulnerable;

(iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

(v) The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;

(vi) The respondent was the leader of a criminal enterprise involving several persons;

(vii) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history; and

(viii) The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.

(4) The following factors may not be considered in determining the punishment to be imposed:

(a) The sex of the respondent;

(b) The race or color of the respondent or the respondent's family;

(c) The creed or religion of the respondent or the respondent's family;

(d) The economic or social class of the respondent or the respondent's family; and

(e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

(5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community. [1998 c 86 § 1; 1997 c 338 § 24; 1995 c 268 § 5; 1992 c 205 § 109; 1990 c 3 § 605; 1981 c 299 § 12; 1979 c 155 § 67; 1977 ex.s. c 291 § 69.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes

a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determine and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) If a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court may impose the special sex offender disposition alternative under RCW 13.40.162.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under *RCW 13.40.169 may impose the disposition alternative under *RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [2011 c 338 § 2; 2007 c 199 § 14. Prior: 2004 c 120 § 4; 2004 c 38 § 11; prior: 2003 c 378 § 3; 2003 c 53 § 99; 2002 c 175 § 22; 1999 c 91 § 2; prior: 1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

*Reviser's note: RCW 13.40.169 expired July 1, 2005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2004 c 120: See note following RCW 13.40.010.

Effective date—2004 c 38: See note following RCW 18.155.075.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.162 Special sex offender disposition alternative. (1) A juvenile offender is eligible for the special sex offender disposition alternative when:

(a) The offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and

(b) The offender has no history of a prior sex offense.

(2) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The respondent's version of the facts and the official version of the facts;

(ii) The respondent's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The respondent's social, educational, and employment situation;

(v) Other evaluation measures used.

The report shall set forth the sources of the evaluator's information.

(b) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) The frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regard-

ing the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(3) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years.

(4) As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(a) Devote time to a specific education, employment, or occupation;

(b) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(c) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(d) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(e) Report as directed to the court and a probation counselor;

(f) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(g) Make restitution to the victim for the cost of any counseling reasonably related to the offense; or

(h) Comply with the conditions of any court-ordered probation bond.

(5) If the court orders twenty-four hour, continuous monitoring of the offender while on probation, the court shall include the basis for this condition in its findings.

(6)(a) The court must order the offender not to attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings.

(b) The parents or legal guardians of the offender are responsible for transportation or other costs associated with

the offender's change of school that would otherwise be paid by the school district.

(c) The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(b) At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

(c) Except as provided in this subsection, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW.

(d) A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (iii) the evaluation and treatment plan comply with this subsection and the rules adopted by the department of health.

(8)(a) If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days confinement for violating conditions of the disposition.

(b) The court may order both execution of the disposition and up to thirty days confinement for the violation of the conditions of the disposition.

(c) The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(9) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(10) A disposition entered under this section is not appealable under RCW 13.40.230. [2011 c 338 § 3.]

13.40.165 Chemical dependency disposition alternative. (1) The purpose of this disposition alternative is to

ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW 70.96A.520. The court must consider eligibility for the chemical dependency disposition alternative when a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent or substance abusing, may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW to determine if the youth is chemically dependent or substance abusing. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(2) The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems and previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(3) The examiner shall assess and report regarding the respondent's relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a) Whether inpatient and/or outpatient treatment is recommended;
- (b) Availability of appropriate treatment;
- (c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (d) Anticipated length of treatment; and
- (e) Recommended crime-related prohibitions.

(4) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection unless the requesting party is the offender and the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(5)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this chemical dependency disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this chemical dependency disposition alternative is appropriate, then the court shall impose the standard range for the offense, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option D of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, suspend exe-

cution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol treatment and/or inpatient drug/alcohol treatment. For purposes of this section, inpatient treatment may not exceed ninety days. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community restitution, and payment of legal financial obligations and restitution.

(6) The drug/alcohol treatment provider shall submit monthly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may impose sanctions pursuant to RCW 13.40.200 or revoke the suspension and order execution of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(7) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

(10) A disposition under this section is not appealable under RCW 13.40.230. [2004 c 120 § 5; 2003 c 378 § 6. Prior: 2002 c 175 § 23; 2002 c 42 § 1; 2001 c 164 § 1; 1997 c 338 § 26.]

Effective date—2004 c 120: See note following RCW 13.40.010.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.167 Mental health disposition alternative. (1) When an offender is subject to a standard range disposition involving confinement by the department, the court may:

- (a) Impose the standard range; or
- (b) Suspend the standard range disposition on condition that the offender complies with the terms of this mental health disposition alternative.

(2) The court may impose this disposition alternative when the court finds the following:

(a) The offender has a current diagnosis, consistent with the American psychiatry association diagnostic and statistical manual of mental disorders, of axis I psychiatric disorder, excluding youth that are diagnosed as solely having a conduct disorder, oppositional defiant disorder, substance abuse disorder, paraphilia, or pedophilia;

(b) An appropriate treatment option is available in the local community;

(c) The plan for the offender identifies and addresses requirements for successful participation and completion of the treatment intervention program including: Incentives and graduated sanctions designed specifically for amenable youth, including the use of detention, detoxication, and inpatient or outpatient substance abuse treatment and psychiatric hospitalization, and structured community support consisting of mental health providers, probation, educational and vocational advocates, child welfare services, and family and community support. For any mental health treatment ordered for an offender under this section, the treatment option selected shall be chosen from among programs which have been successful in addressing mental health needs of juveniles and successful in mental health treatment of juveniles and identified as research-based best practice programs. A list of programs which meet these criteria shall be agreed upon by: The Washington association of juvenile court administrators, the juvenile rehabilitation administration of the department of social and health services, a representative of the division of public behavioral health and justice policy at the University of Washington, and the Washington institute for public policy. The list of programs shall be created not later than July 1, 2003. The group shall provide the list to all superior courts, its own membership, the legislature, and the governor. The group shall meet annually and revise the list as appropriate; and

(d) The offender, offender's family, and community will benefit from use of the mental health disposition alternative.

(3) The court on its own motion may order, or on motion by either party, shall order a comprehensive mental health evaluation to determine if the offender has a designated mental disorder. The court may also order a chemical dependency evaluation to determine if the offender also has a co-occurring chemical dependency disorder. The evaluation shall include at a minimum the following: The offender's version of the facts and the official version of the facts, the offender's offense, an assessment of the offender's mental health and drug-alcohol problems and previous treatment attempts, and the offender's social, criminal, educational, and employment history and living situation.

(4) The evaluator shall determine if the offender is amenable to research-based treatment. A proposed case management and treatment plan shall include at a minimum:

(a) The availability of treatment;

(b) Anticipated length of treatment;

(c) Whether one or more treatment interventions are proposed and the anticipated sequence of those treatment interventions;

(d) The education plan;

(e) The residential plan; and

(f) The monitoring plan.

(5) The court on its own motion may order, or on motion by either party, shall order a second mental health or chemi-

cal dependency evaluation. The party making the motion shall select the evaluator. The requesting party shall pay the cost of any examination ordered under this subsection and subsection (3) of this section unless the court finds the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(6) Upon receipt of the assessments, evaluations, and reports the court shall consider whether the offender and the community will benefit from use of the mental health disposition alternative. The court shall consider the victim's opinion whether the offender should receive the option.

(7) If the court determines that the mental health disposition alternative is appropriate, the court shall impose a standard range disposition, suspend execution of the disposition, and place the offender on community supervision up to one year and impose one or more other local sanctions. Confinement in a secure county detention facility, other than county group homes, inpatient psychiatric treatment facilities, and substance abuse programs, shall be limited to thirty days. As a condition of a suspended disposition, the court shall require the offender to participate in the recommended treatment interventions.

(8) The treatment providers shall submit monthly reports to the court and parties on the offender's progress in treatment. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, medication management, the offender's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(9) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(10) An offender is ineligible for the mental health disposition option under this section if:

(a) The offender is ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(b) The offense for which the disposition is being considered is:

(i) An offense category A+, A, or A- offense, or an attempt, conspiracy, or solicitation to commit a class A+, A, or A- offense;

(ii) Manslaughter in the second degree (RCW 9A.32.070);

(iii) A sex offense as defined in RCW 9.94A.030; or

(iv) Any offense category B+ or B offense, when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon.

(11) Subject to funds appropriated for this specific purpose, the costs incurred by the juvenile courts for the mental health and chemical dependency evaluations, treatment, and costs of supervision required under this section shall be paid by the department's juvenile rehabilitation administration. [2005 c 508 § 1; 2003 c 378 § 4.]

13.40.180 Single disposition order—Consecutive terms when two or more offenses—Limitations—Separate disposition order—Concurrent period of community supervision. (1) Where a disposition in a single disposition

order is imposed on a youth for two or more offenses, the terms shall run consecutively, subject to the following limitations:

(a) Where the offenses were committed through a single act or omission, omission, or through an act or omission which in itself constituted one of the offenses and also was an element of the other, the aggregate of all the terms shall not exceed one hundred fifty percent of the term imposed for the most serious offense;

(b) The aggregate of all consecutive terms shall not exceed three hundred percent of the term imposed for the most serious offense; and

(c) The aggregate of all consecutive terms of community supervision shall not exceed two years in length, or require payment of more than two hundred dollars in fines or the performance of more than two hundred hours of community restitution.

(2) Where disposition in separate disposition orders is imposed on a youth, the periods of community supervision contained in separate orders, if any, shall run concurrently. All other terms contained in separate disposition orders shall run consecutively. [2012 c 177 § 3; 2002 c 175 § 24; 1981 c 299 § 14; 1977 ex.s. c 291 § 72.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

13.40.185 Disposition order—Confinement under departmental supervision or in juvenile facility, when. (1)

Any term of confinement imposed for an offense which exceeds thirty days shall be served under the supervision of the department. If the period of confinement imposed for more than one offense exceeds thirty days but the term imposed for each offense is less than thirty days, the confinement may, in the discretion of the court, be served in a juvenile facility operated by or pursuant to a contract with the state or a county.

(2) Whenever a juvenile is confined in a detention facility or is committed to the department, the court may not directly order a juvenile into a particular county or state facility. The juvenile court administrator and the secretary, assistant secretary, or the secretary's designee, as appropriate, has the sole discretion to determine in which facility a juvenile should be confined or committed. The counties may operate a variety of detention facilities as determined by the county legislative authority subject to available funds. [1994 sp.s. c 7 § 524; 1981 c 299 § 15.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.190 Disposition order—Restitution for loss or damage—Modification of restitution order. (1)(a)

In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted.

(2012 Ed.)

(b) Restitution may include the costs of counseling reasonably related to the offense.

(c) The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter.

(d) The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday and, during this period, the restitution portion of the dispositional order may be modified as to amount, terms, and conditions at any time. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years. If the court grants a respondent's petition pursuant to RCW 13.50.050(11), the court's jurisdiction under this subsection shall terminate.

(e) Nothing in this section shall prevent a respondent from petitioning the court pursuant to RCW 13.50.050(11) if the respondent has paid the full restitution amount stated in the court's order and has met the statutory criteria.

(f) If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution.

(g) At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(5) A respondent under obligation to pay restitution may petition the court for modification of the restitution order. [2010 c 134 § 1; 2004 c 120 § 6. Prior: 1997 c 338 § 29; 1997 c 121 § 9; 1996 c 124 § 2; 1995 c 33 § 5; 1994 sp.s. c 7 § 528; 1987 c 281 § 5; 1985 c 257 § 2; 1983 c 191 § 9; 1979 c 155 § 69; 1977 ex.s. c 291 § 73.]

Effective date—2004 c 120: See note following RCW 13.40.010.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.192 Legal financial obligations—Enforceability—Treatment of obligations upon age of eighteen or conclusion of juvenile court jurisdiction—Extension of judgment. If a juvenile is ordered to pay legal financial obligations, including fines, penalty assessments, attorneys' fees, court costs, and restitution, the money judgment remains enforceable for a period of ten years. When the juvenile reaches the age of eighteen years or at the conclusion of juvenile court jurisdiction, whichever occurs later, the superior court clerk must docket the remaining balance of the juvenile's legal financial obligations in the same manner as other judgments for the payment of money. The judgment remains valid and enforceable until ten years from the date of its imposition. The clerk of the superior court may seek extension of the judgment for legal financial obligations, including crime victims' assessments, in the same manner as RCW 6.17.020 for purposes of collection as allowed under RCW 36.18.190. [1997 c 121 § 7.]

13.40.193 Firearms—Length of confinement. (1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(2)(a)(iii), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine gun in a felony, the following periods of total confinement must be added to the sentence: For a class A felony, six months; for a class B felony, four months; and for a class C felony, two months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

(3) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provi-

sions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

(4) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses. [2003 c 53 § 100; 1997 c 338 § 30; 1994 sp.s. c 7 § 525.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.196 Firearms—Special allegation. A prosecutor may file a special allegation that the offender or an accomplice was armed with a firearm when the offender committed the alleged offense. If a special allegation has been filed and the court finds that the offender committed the alleged offense, the court shall also make a finding whether the offender or an accomplice was armed with a firearm when the offender committed the offense. [1994 sp.s. c 7 § 526.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.198 Penalty assessments—Jurisdiction of court. If a respondent is ordered to pay a penalty assessment pursuant to a dispositional order entered under this chapter, he or she shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of a penalty assessment for an additional ten years. [2000 c 71 § 1.]

Additional notes found at www.leg.wa.gov

13.40.200 Violation of order of restitution, community supervision, fines, penalty assessments, or confinement—Modification of order after hearing—Scope—Rights—Use of fines. (1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a willful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community restitution hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community restitution.

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community restitution unless the monetary penalty is the crime victim penalty assessment, which cannot be converted, waived, or otherwise modified, except for schedule of payment. The number of hours of community restitution in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

(5) When a respondent has willfully violated the terms of a probation bond, the court may modify, revoke, or retain the probation bond as provided in RCW 13.40.054. [2004 c 120 § 7; 2002 c 175 § 25; 1997 c 338 § 31; 1995 c 395 § 8; 1986 c 288 § 5; 1983 c 191 § 15; 1979 c 155 § 70; 1977 ex.s. c 291 § 74.]

Effective date—2004 c 120: See note following RCW 13.40.010.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.205 Release from physical custody, when—Authorized leaves—Leave plan and order—Notice. (1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

(a) Sixty percent of the minimum term of confinement has been served; and

(b) The purpose of the leave is to enable the juvenile:

(i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

(ii) To make plans for parole or release which require the juvenile's personal appearance in the community and which will facilitate the juvenile's reintegration into the community; or

(iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

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(3) No authorized leave may exceed seven consecutive days. The total of all pre-minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community restitution, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence.

(11) Subsections (6), (7), and (8) of this section do not apply to juveniles covered by RCW 13.40.215. [2002 c 175 § 26; 1990 c 3 § 103; 1983 c 191 § 10.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—

Parole officer's right of arrest. (1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section and for offenders who receive a juvenile residential commitment sentence of theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department

shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions

or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) The secretary may modify parole and order any of the conditions or may return the offender to confinement for up to twenty-four weeks if the offender was sentenced for a sex offense as defined under *RCW 9A.44.130 and is known to have violated the terms of parole. Confinement beyond thirty days is intended to only be used for a small and limited number of sex offenders. It shall only be used when other graduated sanctions or interventions have not been effective or the behavior is so egregious it warrants the use of the higher level intervention and the violation: (i) Is a known pattern of behavior consistent with a previous sex offense that puts the youth at high risk for reoffending sexually; (ii) consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or (iii) requires a review under chapter 71.09 RCW, due to a recent overt act. The total number of days of confinement for violations of parole conditions during the parole period shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying offense pursuant to RCW 13.40.0357. The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation. The department is authorized to engage in rule making pursuant to chapter 34.05 RCW, to implement this subsection, including narrowly defining the behaviors that could lead to this higher level intervention.

(c) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [2009 c 187 § 1. Prior: 2007 c 203 § 1; 2007 c 199 § 13; 2002 c 175 § 27; prior: 2001 c 137 § 2; 2001 c 51 § 1; 1997 c 338 § 32; 1994 sp.s. c 7 § 527; 1990 c 3 § 304; 1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

***Reviser's note:** RCW 9A.44.130 was amended by 2010 c 267 § 2, removing the definition of "sex offense" and "kidnapping offense." Those terms are now defined in RCW 9A.44.128.

Applicability—2007 c 203: "This act applies prospectively only and not retroactively. It applies only to juvenile offenders who have been adju-

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icated for an offense that occurred on or after October 1, 2007." [2007 c 203 § 2.]

Effective date—2007 c 203: "This act takes effect October 1, 2007." [2007 c 203 § 3.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2002 c 175: See note following RCW 7.80.130.

Findings—Intent—1997 c 338 §§ 32 and 34: See note following RCW 13.40.212.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.]

Additional notes found at www.leg.wa.gov

13.40.212 Intensive supervision program—Elements—Report. (1) The department shall, no later than January 1, 1999, implement an intensive supervision program as a part of its parole services that includes, at a minimum, the following program elements:

(a) A process of case management involving coordinated and comprehensive planning, information exchange, continuity and consistency, service provision and referral, and monitoring. The components of the case management system shall include assessment, classification, and selection criteria; individual case planning that incorporates a family and community perspective; a mixture of intensive surveillance and services; a balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions; and service brokerage with community resources and linkage with social networks;

(b) Administration of transition services that transcend traditional agency boundaries and professional interests and include courts, institutions, aftercare, education, social and mental health services, substance abuse treatment, and employment and vocational training; and

(c) A plan for information management and program evaluation that maintains close oversight over implementation and quality control, and determines the effectiveness of both the processes and outcomes of the program.

(2) The department shall report annually to the legislature, beginning December 1, 1999, on the department's progress in meeting the intensive supervision program evaluation goals required under subsection (1)(c) of this section. [1997 c 338 § 34.]

Findings—Intent—1997 c 338 §§ 32 and 34: "The legislature finds the present system of transitioning youths from residential status to parole status to discharge is insufficient to provide adequate rehabilitation and public safety in many instances, particularly in cases of offenders at highest risk of reoffending. The legislature further finds that an intensive supervision program based on the following principles holds much promise for positively impacting recidivism rates for juvenile offenders: (1) Progressive increase in responsibility and freedom in the community; (2) facilitation of youths' interaction and involvement with their communities; (3) involvement of both the youth and targeted community support systems such as family, peers, schools, and employers, on the qualities needed for constructive interaction and successful adjustment with the community; (4) development of new resources, supports, and opportunities where necessary; and (5)

ongoing monitoring and testing of youth on their ability to abide by community rules and standards.

The legislature intends for the department to create an intensive supervision program based on the principles stated in this section that will be available to the highest risk juvenile offenders placed on parole." [1997 c 338 § 33.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.213 Juveniles alleged to have committed offenses of prostitution or prostitution loitering—Diversion. (1) When a juvenile is alleged to have committed the offenses of prostitution or prostitution loitering, and the allegation, if proved, would not be the juvenile's first offense, a prosecutor may divert the offense if the county in which the offense is alleged to have been committed has a comprehensive program that provides:

- (a) Safe and stable housing;
- (b) Comprehensive on-site case management;
- (c) Integrated mental health and chemical dependency services, including specialized trauma recovery services;
- (d) Education and employment training delivered on-site; and
- (e) Referrals to off-site specialized services, as appropriate.

(2) A prosecutor may divert a case for prostitution or prostitution loitering into the comprehensive program described in this section, notwithstanding the filing criteria set forth in RCW 13.40.070(5).

(3) A diversion agreement under this section may extend to twelve months.

(4)(a) The administrative office of the courts shall compile data regarding:

- (i) The number of juveniles whose cases are diverted into the comprehensive program described in this section;
- (ii) Whether the juveniles complete their diversion agreements under this section; and
- (iii) Whether juveniles whose cases have been diverted under this section have been subsequently arrested or committed subsequent offenses.

(b) An annual report of the data compiled shall be provided to the governor and the appropriate committee of the legislature. The first report is due by November 1, 2010. [2010 c 289 § 8; 2009 c 252 § 2.]

Findings—2009 c 252: "The legislature finds that juveniles involved in the commercial sex trade are sexually exploited and that they face extreme threats to their physical and emotional well-being. In order to help them break out of the isolation, fear, and danger of the commercial sex trade and to assist them in their recovery from the resulting mental and physical harm and in the development of skills that will allow them to become independent and achieve long-term security, these juveniles are in critical need of comprehensive services, including housing, mental health counseling, education, employment, chemical dependency treatment, and skill building. The legislature further finds that a diversion program to provide these comprehensive services, working within existing resources in the counties which prosecute juveniles for prostitution and prostitution loitering, may be an appropriate alternative to the prosecution of juveniles involved in the commercial sex trade." [2009 c 252 § 1.]

13.40.215 Juveniles found to have committed violent or sex offense or stalking—Notification of discharge, parole, leave, release, transfer, or escape—To whom given—School attendance—Definitions. (1)(a) Except as provided in subsection (2) of this section, at the earliest pos-

sible date, and in no event later than thirty days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense, a sex offense, or stalking, to the following:

- (i) The chief of police of the city, if any, in which the juvenile will reside;
- (ii) The sheriff of the county in which the juvenile will reside; and
- (iii) The approved private schools and the common school district board of directors of the district in which the juvenile intends to reside or the approved private school or public school district in which the juvenile last attended school, whichever is appropriate, except when it has been determined by the department that the juvenile is twenty-one years old or will be in the community for less than seven consecutive days on approved leave and will not be attending school during that time.

(b) After July 25, 1999, the department shall send a written notice to approved private and public schools under the same conditions identified in subsection (1)(a)(iii) of this section when a juvenile adjudicated of any offense is transferred to a community residential facility, discharged, paroled, released, or granted a leave. The community residential facility shall provide written notice of the offender's criminal history to any school that the offender attends while residing at the community residential facility and to any employer that employs the offender while residing at the community residential facility.

(c) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

- (i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and
- (iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(d) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2)(a) If a juvenile found to have committed a violent offense, a sex offense, or stalking escapes from a facility of the department, the secretary shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the juvenile resided immediately before the juvenile's arrest. If

previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the juvenile is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(b) The secretary may authorize a leave, for a juvenile found to have committed a violent offense, a sex offense, or stalking, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) Upon discharge, parole, transfer to a community residential facility, or other authorized leave or release, a convicted juvenile sex offender shall not attend a public or approved private elementary, middle, or high school that is attended by a victim or a sibling of a victim of the sex offender. The parents or legal guardians of the convicted juvenile sex offender shall be responsible for transportation or other costs associated with or required by the sex offender's change in school that otherwise would be paid by a school district. Upon discharge, parole, transfer to a community residential facility, or other authorized leave or release of a convicted juvenile sex offender, the secretary shall send written notice of the discharge, parole, or other authorized leave or release and the requirements of this subsection to the common school district board of directors of the district in which the sex offender intends to reside or the district in which the sex offender last attended school, whichever is appropriate. The secretary shall send a similar notice to any approved private school the juvenile will attend, if known, or if unknown, to the approved private schools within the district the juvenile resides or intends to reside.

(6) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Stalking" means the crime of stalking as defined in RCW 9A.46.110;

(d) "Next of kin" means a person's spouse, parents, siblings, and children. [1999 c 198 § 1; 1997 c 265 § 2; 1995 c 324 § 1. Prior: 1994 c 129 § 6; 1994 c 78 § 1; 1993 c 27 § 1; 1990 c 3 § 101.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

13.40.217 Juveniles adjudicated of sex offenses—Release of information authorized. (1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning juveniles adjudicated of sex offenses.

(2) In order for public agencies to have the information necessary for notifying the public about sex offenders as authorized in RCW 4.24.550, the secretary shall issue to appropriate law enforcement agencies narrative notices regarding the pending release of sex offenders from the department's juvenile rehabilitation facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification.

(3) For the purposes of this section, the department shall classify as risk level I those offenders whose risk assessments indicate a low risk of reoffense within the community at large. The department shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The department shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large. [1997 c 364 § 2; 1990 c 3 § 102.]

Additional notes found at www.leg.wa.gov

13.40.219 Arrest for prostitution or prostitution loitering—Alleged offender—Victim of severe form of trafficking, commercial sex abuse of a minor. In any proceeding under this chapter related to an arrest for prostitution or prostitution loitering, there is a presumption that the alleged offender meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States code, and that the alleged offender is also a victim of commercial sex abuse of a minor. [2010 c 289 § 9.]

13.40.220 Costs of support, treatment, and confinement—Order—Contempt of court. (1) Whenever legal custody of a child is vested in someone other than his or her parents, under this chapter, and not vested in the department of social and health services, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum represent-

ing in whole or in part the costs of support, treatment, and confinement of the child after the decree is entered.

(2) If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against such person for contempt.

(3) Whenever legal custody of a child is vested in the department under this chapter, the parents or other persons legally obligated to care for and support the child shall be liable for the costs of support, treatment, and confinement of the child, in accordance with the department's reimbursement of cost schedule. The department shall adopt a reimbursement of cost schedule based on the costs of providing such services, and shall determine an obligation based on the responsible parents' or other legally obligated person's ability to pay. The department is authorized to adopt additional rules as appropriate to enforce this section.

(4) To enforce subsection (3) of this section, the department shall serve on the parents or other person legally obligated to care for and support the child a notice and finding of financial responsibility requiring the parents or other legally obligated person to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect and should not be ordered. This notice and finding shall relate to the costs of support, treatment, and confinement of the child in accordance with the department's reimbursement of cost schedule adopted under this section, including periodic payments to be made in the future. The hearing shall be held pursuant to chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

(5) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the parent or legally obligated person by certified mail, return receipt requested. The receipt shall be prima facie evidence of service.

(6) If the parents or other legally obligated person objects to the notice and finding of financial responsibility, then an application for an adjudicative hearing may be filed within twenty days of the date of service of the notice. If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the parents or other legally obligated person and shall also determine the amount of periodic payments to be made in the future. If the parents or other legally responsible person fails to file an application within twenty days, the notice and finding of financial responsibility shall become a final administrative order.

(7) Debts determined pursuant to this section are subject to collection action without further necessity of action by a presiding or reviewing officer. The department may collect the debt in accordance with RCW 43.20B.635, 43.20B.640, 74.20A.060, and 74.20A.070. The department shall exempt from payment parents receiving adoption support under *RCW 74.13.100 through 74.13.145, parents eligible to receive adoption support under *RCW 74.13.150, and a parent or other legally obligated person when the parent or other legally obligated person, or such person's child, spouse, or spouse's child, was the victim of the offense for which the child was committed.

(8) An administrative order entered pursuant to this section shall supersede any court order entered prior to June 13, 1994.

(9) The department shall be subrogated to the right of the child and his or her parents or other legally responsible person to receive support payments for the benefit of the child from any parent or legally obligated person pursuant to a support order established by a superior court or pursuant to RCW 74.20A.055. The department's right of subrogation under this section is limited to the liability established in accordance with its cost schedule for support, treatment, and confinement, except as addressed in subsection (10) of this section.

(10) Nothing in this section precludes the department from recouping such additional support payments from the child's parents or other legally obligated person as required to qualify for receipt of federal funds. The department may adopt such rules dealing with liability for recoupment of support, treatment, or confinement costs as may become necessary to entitle the state to participate in federal funds unless such rules would be expressly prohibited by law. If any law dealing with liability for recoupment of support, treatment, or confinement costs is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [1995 c 300 § 1; 1994 sp.s. c 7 § 529; 1993 c 466 § 1; 1977 ex.s. c 291 § 76.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 and 74.13.150 were recodified as RCW 74.13A.005 through 74.13A.080 and 74.13A.085 pursuant to 2009 c 520 § 95.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.230 Appeal from order of disposition—Jurisdiction—Procedure—Scope—Release pending appeal.

(1) Dispositions reviewed pursuant to RCW 13.40.160 shall be reviewed in the appropriate division of the court of appeals.

An appeal under this section shall be heard solely upon the record that was before the disposition court. No written briefs may be required, and the appeal shall be heard within thirty days following the date of sentencing and a decision rendered within fifteen days following the argument. The supreme court shall promulgate any necessary rules to effectuate the purposes of this section.

(2) To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

(3) If the court does not find subsection (2)(a) of this section it shall remand the case for disposition within the standard range.

(4) If the court finds subsection (2)(a) but not subsection (2)(b) of this section it shall remand the case with instructions for further proceedings consistent with the provisions of this chapter.

(5) The disposition court may impose conditions on release pending appeal as provided in RCW *13.40.040(4) and 13.40.050(6).

(6) Appeal of a disposition under this section does not affect the finality or appeal of the underlying adjudication of guilt. [1997 c 338 § 35; 1981 c 299 § 16; 1979 c 155 § 72; 1977 ex.s. c 291 § 77.]

***Reviser's note:** RCW 13.40.040 was amended by 2002 c 171 § 2, changing subsection (4) to subsection (5).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.240 Construction of RCW references to juvenile delinquents or juvenile delinquency. All references to juvenile delinquents or juvenile delinquency in other chapters of the Revised Code of Washington shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter. [1977 ex.s. c 291 § 78.]

Additional notes found at www.leg.wa.gov

13.40.250 Traffic and civil infraction cases. A traffic or civil infraction case involving a juvenile under the age of sixteen may be diverted in accordance with the provisions of this chapter or filed in juvenile court.

(1) If a notice of a traffic or civil infraction is filed in juvenile court, the juvenile named in the notice shall be afforded the same due process afforded to adult defendants in traffic infraction cases.

(2) A monetary penalty imposed upon a juvenile under the age of sixteen who is found to have committed a traffic or civil infraction may not exceed one hundred dollars. At the juvenile's request, the court may order performance of a number of hours of community restitution in lieu of a monetary penalty, at the rate of the prevailing state minimum wage per hour.

(3) A diversion agreement entered into by a juvenile referred pursuant to this section shall be limited to thirty hours of community restitution, or educational or informational sessions.

(4) Traffic or civil infractions referred to a youth court pursuant to this section are subject to the conditions imposed by RCW 13.40.630.

(5) If a case involving the commission of a traffic or civil infraction or offense by a juvenile under the age of sixteen has been referred to a diversion unit, an abstract of the action taken by the diversion unit may be forwarded to the department of licensing in the manner provided for in RCW 46.20.270(2). [2002 c 237 § 19; 2002 c 175 § 28; 1997 c 338 § 36; 1980 c 128 § 16.]

Reviser's note: This section was amended by 2002 c 175 § 28 and by 2002 c 237 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

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13.40.265 Firearm, alcohol, and drug violations.

(1)(a) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense while armed with a firearm or an offense that is a violation of RCW 9.41.040(2)(a)(iii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2)(a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department of licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement. [2003 c 53 § 101; 1997 c 338 § 37; 1994 sp.s. c 7 § 435; 1989 c 271 § 116; 1988 c 148 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Legislative finding—1988 c 148: "The legislature finds that many persons under the age of eighteen unlawfully use intoxicating liquor and controlled substances. The use of these substances by juveniles can cause serious damage to their physical, mental, and emotional well-being, and in some instances results in lifelong disabilities.

The legislature also finds that juveniles who unlawfully use alcohol and controlled substances frequently operate motor vehicles while under the influence of and impaired by alcohol or drugs. Juveniles who use these substances often have seriously impaired judgment and motor skills and pose an unduly high risk of causing injury or death to themselves or other persons on the public highways.

The legislature also finds that juveniles will be deterred from the unlawful use of alcohol and controlled substances if their driving privileges are suspended or revoked for using illegal drugs or alcohol." [1988 c 148 § 1.]

Additional notes found at www.leg.wa.gov

13.40.280 Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles. (1) The secretary, with the consent of the secretary of the department of corrections, has

the authority to transfer a juvenile presently or hereafter committed to the department of social and health services to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of social and health services may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of social and health services shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) Assaults made against any staff member at a juvenile corrections institution that are reported to a local law enforcement agency shall require a hearing held by the department of social and health services review board within ten judicial working days. The board shall determine whether the accused juvenile offender represents a continuing and serious threat to the safety of others in the institution.

(4) Upon conviction in a court of law for custodial assault as defined in RCW 9A.36.100, the department of social and health services review board shall conduct a second hearing, within five judicial working days, to recommend to the secretary of the department of social and health services that the convicted juvenile be transferred to an adult correctional facility if the review board has determined the juvenile offender represents a continuing and serious threat to the safety of others in the institution.

The juvenile has the burden to show cause why the transfer to an adult correctional facility should not occur.

(5) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(6) A juvenile offender who has been transferred to the department of corrections under this section may, in the discretion of the secretary of the department of social and health services and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary. [1989 c 410 § 2; 1989 c 407 § 8; 1983 c 191 § 22.]

Reviser's note: This section was amended by 1989 c 407 § 8 and by 1989 c 410 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—1989 c 410: "The legislature recognizes the ever-increasing severity of offenses committed by juvenile offenders residing in this state's juvenile detention facilities and the increasing aggressive nature of detained juveniles due to drugs and gang-related violence. The purpose of this act is to provide necessary protection to state employees and juvenile residents of these institutions from assaults committed against them by juvenile detainees." [1989 c 410 § 1.]

13.40.285 Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement. A juvenile offender ordered to serve a term of confinement with the department of social and health services who is subsequently sentenced to the department of corrections may, with the consent of the

department of corrections, be transferred by the secretary of social and health services to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court. [1983 c 191 § 23.]

13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday. (1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition;

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult criminal court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older. [2005 c 238 § 2; 2000 c 71 § 2; 1994 sp.s. c 7 § 530; 1986 c 288 § 6; 1983 c 191 § 17; 1981 c 299 § 17; 1979 c 155 § 73; 1975 1st ex.s. c 170 § 1. Formerly RCW 13.04.260.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.305 Juvenile offender adjudicated of theft of motor vehicle, possession of stolen vehicle, taking motor vehicle without permission in the first degree, taking motor vehicle without permission in the second degree—Local sanctions—Evaluation. If a juvenile is adjudicated of theft of a motor vehicle under RCW 9A.56.065, possession of a stolen vehicle under RCW 9A.56.068, taking a motor vehicle without permission in the first degree as defined in RCW 9A.56.070(1), or taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075(1) and is sentenced to local sanctions, the juvenile’s disposition shall include an evaluation to determine whether the juvenile is in need of community-based rehabilitation services and to complete any treatment recommended by the evaluation. [2007 c 199 § 12.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

13.40.308 Juvenile offender adjudicated of taking motor vehicle without permission in the first degree, theft of motor vehicle, possession of a stolen vehicle, taking motor vehicle without permission in the second degree—Minimum sentences. (1) If a respondent is adjudicated of taking a motor vehicle without permission in the first degree as defined in RCW 9A.56.070, the court shall impose the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes no less than three months of community supervision, forty-five hours of community restitution, a two hundred dollar fine, and a requirement that the juvenile remain at home such that the juvenile is confined to a private residence for no less than five days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement shall be served on nonschool days;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes six months of community supervision, no less than ten days of detention, ninety hours of community restitution, and a four hundred dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than fifteen to thirty-six weeks commitment to the juvenile rehabilitation administration, four months of parole supervision, ninety hours of community restitution, and a four hundred dollar fine.

(2) If a respondent is adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen vehicle as defined under RCW 9A.56.068, the court shall impose the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes no less than three months of community supervision, forty-five hours of community restitution, a two hundred dollar fine, and either ninety hours of community restitution or a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no

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less than five days. The juvenile may be subject to electronic monitoring where available;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes no less than six months of community supervision, no less than ten days of detention, ninety hours of community restitution, and a four hundred dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than fifteen to thirty-six weeks commitment to the juvenile rehabilitation administration, four months of parole supervision, ninety hours of community restitution, and a four hundred dollar fine.

(3) If a respondent is adjudicated of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, the court shall impose a standard range as follows:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes three months of community supervision, fifteen hours of community restitution, and a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than one day. If the juvenile is enrolled in school, the confinement shall be served on nonschool days. The juvenile may be subject to electronic monitoring where available;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes no less than one day of detention, three months of community supervision, thirty hours of community restitution, a one hundred fifty dollar fine, and a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than two days. If the juvenile is enrolled in school, the confinement shall be served on nonschool days. The juvenile may be subject to electronic monitoring where available; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than three days of detention, six months of community supervision, forty-five hours of community restitution, a one hundred fifty dollar fine, and a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than seven days. If the juvenile is enrolled in school, the confinement shall be served on nonschool days. The juvenile may be subject to electronic monitoring where available. [2009 c 454 § 4; 2007 c 199 § 15.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

13.40.310 Transitional treatment program for gang and drug-involved juvenile offenders. (1) The department of social and health services may contract with a community-based nonprofit organization to establish a three-step transitional treatment program for gang and drug-involved juvenile offenders committed to the custody of the department under chapter 13.40 RCW. Any such program shall provide six to twenty-four months of treatment. The program shall emphasize the principles of self-determination, unity, collective work and responsibility, cooperative economics, and creativ-

ity. The program shall be culturally relevant and appropriate and shall include:

(a) A culturally relevant and appropriate institution-based program that provides comprehensive drug and alcohol services, individual and family counseling, and a wilderness experience of constructive group living, rigorous physical exercise, and academic studies;

(b) A culturally relevant and appropriate community-based structured group living program that focuses on individual goals, positive community involvement, coordinated drug and alcohol treatment, coordinated individual and family counseling, academic and vocational training, and employment in apprenticeship, internship, and entrepreneurial programs; and

(c) A culturally relevant and appropriate transitional group living program that provides support services, academic services, and coordinated individual and family counseling.

(2) Participation in any such program shall be on a voluntary basis.

(3) The department shall adopt rules as necessary to implement any such program. [1991 c 326 § 4.]

Finding—1991 c 326: "The legislature finds that a destructive lifestyle of drug and street gang activity is rapidly becoming prevalent among some of the state's youths. Gang and drug activity may be a culturally influenced phenomenon which the legislature intends public and private agencies to consider and address in prevention and treatment programs. Gang and drug-involved youths are more likely to become addicted to drugs or alcohol, live in poverty, experience high unemployment, be incarcerated, and die of violence than other youths." [1991 c 326 § 3.]

Additional notes found at www.leg.wa.gov

13.40.320 Juvenile offender basic training camp program. (1) The department of social and health services shall establish a medium security juvenile offender basic training camp program. This program for juvenile offenders serving a term of confinement under the supervision of the department is exempt from the licensing requirements of chapter 74.15 RCW.

(2) The department may contract under this chapter with private companies, the national guard, or other federal, state, or local agencies to operate the juvenile offender basic training camp.

(3) The juvenile offender basic training camp shall be a structured and regimented model emphasizing the building up of an offender's self-esteem, confidence, and discipline. The juvenile offender basic training camp program shall provide participants with basic education, prevocational training, work-based learning, work experience, work ethic skills, conflict resolution counseling, substance abuse intervention, anger management counseling, and structured intensive physical training. The juvenile offender basic training camp program shall have a curriculum training and work schedule that incorporates a balanced assignment of these or other rehabilitation and training components for no less than sixteen hours per day, six days a week.

The department shall develop standards for the safe and effective operation of the juvenile offender basic training camp program, for an offender's successful program completion, and for the continued after-care supervision of offenders who have successfully completed the program.

(4) Offenders eligible for the juvenile offender basic training camp option shall be those with a disposition of not more than sixty-five weeks. Violent and sex offenders shall not be eligible for the juvenile offender basic training camp program.

(5) If the court determines that the offender is eligible for the juvenile offender basic training camp option, the court may recommend that the department place the offender in the program. The department shall evaluate the offender and may place the offender in the program. The evaluation shall include, at a minimum, a risk assessment developed by the department and designed to determine the offender's suitability for the program. No juvenile who is assessed as a high risk offender or suffers from any mental or physical problems that could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the juvenile offender basic training camp program.

(6) All juvenile offenders eligible for the juvenile offender basic training camp sentencing option shall spend one hundred twenty days of their disposition in a juvenile offender basic training camp. This period may be extended for up to forty days by the secretary if a juvenile offender requires additional time to successfully complete the basic training camp program. If the juvenile offender's activities while in the juvenile offender basic training camp are so disruptive to the juvenile offender basic training camp program, as determined by the secretary according to standards developed by the department, as to result in the removal of the juvenile offender from the juvenile offender basic training camp program, or if the offender cannot complete the juvenile offender basic training camp program due to medical problems, the secretary shall require that the offender be committed to a juvenile institution to serve the entire remainder of his or her disposition, less the amount of time already served in the juvenile offender basic training camp program.

(7) All offenders who successfully graduate from the juvenile offender basic training camp program shall spend the remainder of their disposition on parole in a juvenile rehabilitation administration intensive aftercare program in the local community. Violation of the conditions of parole is subject to sanctions specified in RCW 13.40.210(4). The program shall provide for the needs of the offender based on his or her progress in the aftercare program as indicated by ongoing assessment of those needs and progress. The intensive aftercare program shall monitor postprogram juvenile offenders and assist them to successfully reintegrate into the community. In addition, the program shall develop a process for closely monitoring and assessing public safety risks. The intensive aftercare program shall be designed and funded by the department of social and health services.

(8) The department shall also develop and maintain a database to measure recidivism rates specific to this incarceration program. The database shall maintain data on all juvenile offenders who complete the juvenile offender basic training camp program for a period of two years after they have completed the program. The database shall also maintain data on the criminal activity, educational progress, and employment activities of all juvenile offenders who participated in the program. [2002 c 354 § 234; 2001 c 137 § 1; 1997 c 338 § 38; 1995 c 40 § 1; 1994 sp.s. c 7 § 532.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Juvenile basic training camps—1994 sp.s. c 7: "The legislature finds that the number of juvenile offenders and the severity of their crimes is increasing rapidly statewide. In addition, many juvenile offenders continue to reoffend after they are released from the juvenile justice system causing disproportionately high and expensive rates of recidivism.

The legislature further finds that juvenile criminal behavior is often the result of a lack of self-discipline, the lack of systematic work habits and ethics, the inability to deal with authority figures, and an unstable or unstructured living environment. The legislature further finds that the department of social and health services currently operates an insufficient number of confinement beds to meet the rapidly growing juvenile offender population. Together these factors are combining to produce a serious public safety hazard and the need to develop more effective and stringent juvenile punishment and rehabilitation options.

The legislature intends that juvenile offenders who enter the state rehabilitation system have the opportunity and are given the responsibility to become more effective participants in society by enhancing their personal development, work ethics, and life skills. The legislature recognizes that structured incarceration programs for juvenile offenders such as juvenile offender basic training camps, can instill the self-discipline, accountability, self-esteem, and work ethic skills that could discourage many offenders from returning to the criminal justice system. Juvenile offender basic training camp incarceration programs generally emphasize life skills training, pre-vocational work skills training, anger management, dealing with difficult at-home family problems and/or abuses, discipline, physical training, structured and intensive work activities, and educational classes. The legislature further recognizes that juvenile offenders can benefit from a highly structured basic training camp environment and the public can also benefit through increased public protection and reduced cost due to lowered rates of recidivism." [1994 sp.s. c 7 § 531.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.400 Applicability of RCW 10.01.040 to chapter. The provisions of RCW 10.01.040 apply to chapter 13.40 RCW. [1979 c 155 § 74.]

Additional notes found at www.leg.wa.gov

13.40.430 Disparity in disposition of juvenile offenders—Data collection. The administrative office of the courts shall collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter 373, Laws of 1993. The administrative office of the courts may, in consultation with juvenile courts, determine a format for the collection of such data and a schedule for the reporting of such data and shall keep a minimum of five years of data at any given time. [2005 c 282 § 27; 2003 c 207 § 13; 1993 c 373 § 2.]

Additional notes found at www.leg.wa.gov

13.40.460 Juvenile rehabilitation programs—Administration. The secretary, assistant secretary, or the secretary's designee shall manage and administer the department's juvenile rehabilitation responsibilities, including but not limited to the operation of all state institutions or facilities used for juvenile rehabilitation.

The secretary or assistant secretary shall:

(1) Prepare a biennial budget request sufficient to meet the confinement and rehabilitative needs of the juvenile reha-

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bilitation program, as forecast by the office of financial management;

(2) Create by rule a formal system for inmate classification. This classification system shall consider:

- (a) Public safety;
- (b) Internal security and staff safety;
- (c) Rehabilitative resources both within and outside the department;

(d) An assessment of each offender's risk of sexually aggressive behavior as provided in RCW 13.40.470; and

(e) An assessment of each offender's vulnerability to sexually aggressive behavior as provided in RCW 13.40.470;

(3) Develop agreements with local jurisdictions to develop regional facilities with a variety of custody levels;

(4) Adopt rules establishing effective disciplinary policies to maintain order within institutions;

(5) Develop a comprehensive diagnostic evaluation process to be used at intake, including but not limited to evaluation for substance addiction or abuse, literacy, learning disabilities, fetal alcohol syndrome or effect, attention deficit disorder, and mental health;

(6) Develop placement criteria:

(a) To avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization under RCW 13.40.470(1)(c); and

(b) To avoid placing a juvenile offender on parole status who has been assessed as a moderate to high risk for sexually aggressive behavior in a department community residential program with another child who is: (i) Dependent under chapter 13.34 RCW, or an at-risk youth or child in need of services under chapter 13.32A RCW; and (ii) not also a juvenile offender on parole status;

(7) Develop a plan to implement, by July 1, 1995:

(a) Substance abuse treatment programs for all state juvenile rehabilitation facilities and institutions;

(b) Vocational education and instruction programs at all state juvenile rehabilitation facilities and institutions; and

(c) An educational program to establish self-worth and responsibility in juvenile offenders. This educational program shall emphasize instruction in character-building principles such as: Respect for self, others, and authority; victim awareness; accountability; work ethics; good citizenship; and life skills; and

(8)(a) The juvenile rehabilitation administration shall develop uniform policies related to custodial assaults consistent with RCW 72.01.045 and 9A.36.100 that are to be followed in all juvenile rehabilitation administration facilities; and

(b) The juvenile rehabilitation administration will report assaults in accordance with the policies developed in (a) of this subsection. [2003 c 229 § 1; 1999 c 372 § 2; 1997 c 386 § 54; 1994 sp.s. c 7 § 516.]

Finding—Intent—1997 c 386 §§ 50-55: See note following RCW 13.40.470.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.40.462 Reinvesting in youth program. (1) The department of social and health services juvenile rehabilita-

tion administration shall establish a reinvesting in youth program that awards grants to counties for implementing research-based early intervention services that target juvenile justice-involved youth and reduce crime, subject to the availability of amounts appropriated for this specific purpose.

(2) Effective July 1, 2007, any county or group of counties may apply for participation in the reinvesting in youth program.

(3) Counties that participate in the reinvesting in youth program shall have a portion of their costs of serving youth through the research-based intervention service models paid for with moneys from the reinvesting in youth account established pursuant to RCW 13.40.466.

(4) The department of social and health services juvenile rehabilitation administration shall review county applications for funding through the reinvesting in youth program and shall select the counties that will be awarded grants with funds appropriated to implement this program. The department, in consultation with the Washington state institute for public policy, shall develop guidelines to determine which counties will be awarded funding in accordance with the reinvesting in youth program. At a minimum, counties must meet the following criteria in order to participate in the reinvesting in youth program:

(a) Counties must match state moneys awarded for research-based early intervention services with nonstate resources that are at least proportional to the expected local government share of state and local government cost avoidance that would result from the implementation of such services;

(b) Counties must demonstrate that state funds allocated pursuant to this section are used only for the intervention service models authorized pursuant to RCW 13.40.464;

(c) Counties must participate fully in the state quality assurance program established in RCW 13.40.468 to ensure fidelity of program implementation. If no state quality assurance program is in effect for a particular selected research-based service, the county must submit a quality assurance plan for state approval with its grant application. Failure to demonstrate continuing compliance with quality assurance plans shall be grounds for termination of state funding; and

(d) Counties that submit joint applications must submit for approval by the department of social and health services juvenile rehabilitation administration multicounty plans for efficient program delivery. [2011 1st sp.s. c 32 § 4; 2006 c 304 § 2.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Finding—Intent—2006 c 304: "The legislature finds that there are youth and family-focused intervention services that have been proven through rigorous evaluation in the state of Washington and elsewhere to significantly reduce violence and crime while saving more public safety dollars than they cost. Under current state laws, no local government acting alone has the financial incentive to invest in these cost-effective services because the savings accrue to multiple levels of government with the largest savings going to the state. It is the intent of the legislature to create incentives for local government to invest in cost-effective intervention services that reduce crime by reimbursing local governments with a portion of the cost savings that accrue to the state as the result of local investments in such services." [2006 c 304 § 1.]

Entitlement not created—2006 c 304: "Nothing in this act creates an entitlement for a county or group of counties to receive funding under the program in sections 2 and 3 of this act." [2006 c 304 § 8.]

Effective date—2006 c 304: "This act takes effect July 1, 2006." [2006 c 304 § 9.]

13.40.464 Reinvesting in youth program—Guidelines. (1)(a) In order to receive funding through the reinvesting in youth program established pursuant to RCW 13.40.462, intervention service models must meet the following minimum criteria:

(i) There must be scientific evidence from at least one rigorous evaluation study of the specific service model that measures recidivism reduction;

(ii) There must be evidence that the specific service model's results can be replicated outside of an academic research environment;

(iii) The evaluation or evaluations of the service model must permit dollar cost estimates of both benefits and costs so that the benefit-cost ratio of the model can be calculated; and

(iv) The public taxpayer benefits to all levels of state and local government must exceed the service model costs.

(b) In calendar year 2006, for use beginning in fiscal year 2008, the Washington state institute for public policy shall publish a list of service models that are eligible for reimbursement through the investing in youth program. As authorized by the board of the institute and to the extent necessary to respond to new research and information, the institute shall periodically update the list of service models. The institute shall use the technical advisory committee established in *RCW 13.40.462(5) to review and provide comments on the list of service models that are eligible for reimbursement.

(2) In calendar year 2006, for use beginning in fiscal year 2008, the Washington state institute for public policy shall review and update the methodology for calculating cost savings resulting from implementation of this program. As authorized by the board of the institute and to the extent necessary to respond to new research and information, the institute shall periodically further review and update the methodology. As authorized by the board of the institute, when the institute reviews and updates the methodology for calculating cost savings, the institute shall provide an estimate of savings and avoided costs resulting from this program, along with a projection of future savings and avoided costs, to the appropriate committees of the legislature. The institute shall use the technical advisory committee established in *RCW 13.40.462(5) to review and provide comments on its methodology and cost calculations.

(3) In calendar year 2006, for use beginning in fiscal year 2008, the department of social and health services' juvenile rehabilitation administration shall establish a distribution formula to provide funding to local governments that implement research-based intervention services pursuant to this program. The department shall periodically update the distribution formula. The distribution formula shall require that the state allocation to local governments be proportional to the expected state government share of state and local government cost avoidance that would result from the implementation of such services based on the methodology maintained by the Washington state institute for public policy pursuant to subsection (2) of this section. The department shall use the technical advisory committee established in *RCW 13.40.462(5) to review and provide comments on its proposed distribution formula.

(4) The department of social and health services juvenile rehabilitation administration shall provide a report to the legislature on the initial cost savings calculation methodology and distribution formula by October 1, 2006. [2006 c 304 § 3.]

*Reviser's note: RCW 13.40.462 was amended by 2011 1st sp.s. c 32 § 4, deleting subsection (5).

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

13.40.466 Reinvesting in youth account. (1) The reinvesting in youth account is created in the state treasury. Moneys in the account shall be spent only after appropriation. Expenditures from the account may be used to reimburse local governments for the implementation of the reinvesting in youth program established in RCW 13.40.462 and 13.40.464.

(2) Revenues to the reinvesting in youth account consist of revenues appropriated to or deposited in the account.

(3) The department of social and health services juvenile rehabilitation administration shall review and monitor the expenditures made by any county or group of counties that is funded, in whole or in part, with funds provided through the reinvesting in youth account. Counties shall repay any funds that are not spent in accordance with RCW 13.40.462 and 13.40.464. [2006 c 304 § 4.]

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

13.40.468 Juvenile rehabilitation administration—State quality assurance program. The department of social and health services juvenile rehabilitation administration shall establish a state quality assurance program. The juvenile rehabilitation administration shall monitor the implementation of intervention services funded pursuant to RCW 13.40.466 and shall evaluate adherence to service model design and service completion rate. [2006 c 304 § 6.]

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

13.40.470 Vulnerable youth committed to residential facilities—Protection from sexually aggressive youth—Assessment process. (1) The department shall implement a policy for protecting youth committed to state-operated or state-funded residential facilities under this chapter who are vulnerable to sexual victimization by other youth committed to those facilities who are sexually aggressive. The policy shall include, at a minimum, the following elements:

(a) Development and use of an assessment process for identifying youth, within thirty days of commitment to the department, who present a moderate or high risk of sexually aggressive behavior for the purposes of this section. The assessment process need not require that every youth who is adjudicated or convicted of a sex offense as defined in RCW 9.94A.030 be determined to be sexually aggressive, nor shall a sex offense adjudication or conviction be required in order to determine a youth is sexually aggressive. Instead, the assessment process shall consider the individual circumstances of the youth, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to sexual aggressiveness. The defini-

tion of "sexually aggressive youth" in RCW 74.13.075 does not apply to this section to the extent that it conflicts with this section;

(b) Development and use of an assessment process for identifying youth, within thirty days of commitment to the department, who may be vulnerable to victimization by youth identified under (a) of this subsection as presenting a moderate or high risk of sexually aggressive behavior. The assessment process shall consider the individual circumstances of the youth, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to vulnerability;

(c) Development and use of placement criteria to avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization, except that they may be assigned to the same multiple-person sleeping quarters if those sleeping quarters are regularly monitored by visual surveillance equipment or staff checks;

(d) Development and use of procedures for minimizing, within available funds, unsupervised contact in state-operated or state-funded residential facilities between youth presenting moderate to high risk of sexually aggressive behavior and youth assessed as vulnerable to sexual victimization. The procedures shall include taking reasonable steps to prohibit any youth committed under this chapter who present a moderate to high risk of sexually aggressive behavior from entering any sleeping quarters other than the one to which they are assigned, unless accompanied by an authorized adult.

(2) For the purposes of this section, the following terms have the following meanings:

(a) "Sleeping quarters" means the bedrooms or other rooms within a residential facility where youth are assigned to sleep.

(b) "Unsupervised contact" means contact occurring outside the sight or hearing of a responsible adult for more than a reasonable period of time under the circumstances. [1997 c 386 § 50.]

Finding—Intent—1997 c 386 §§ 50-55: "The legislature finds that the placement of children and youth in state-operated or state-funded residential facilities must be done in such a manner as to protect children who are vulnerable to sexual victimization from youth who are sexually aggressive. To achieve this purpose, the legislature intends the department of social and health services to develop a policy for assessing sexual aggressiveness and vulnerability to sexual victimization of children and youth who are placed in state-operated or state-funded residential facilities." [1997 c 386 § 49.]

13.40.480 Student records and information—Reasons for release—Who may request. (1) Pursuant to RCW 28A.600.475, and to the extent permitted by the family educational and privacy rights act of 1974, 20 U.S.C. Sec. 1232g(b), and in order to serve the juvenile while in detention and to prepare any postconviction services, schools shall make all student records and information necessary for risk assessment, security classification, and placement available to court personnel and the department within three working days of a request under this section.

(2)(a) When a juvenile has one or more prior convictions, a request for records shall be made by the county prosecuting attorney, or probation department if available, to the school not more than ten days following the juvenile's arrest

or detention, whichever occurs later, and prior to trial. The request may be made by subpoena.

(b) Where a juvenile has no prior conviction, a request to release records shall be made by subpoena upon the juvenile's conviction. When the request for a juvenile's student records and information is made by subpoena following conviction, the court or other issuing agency shall order the school on which the subpoena is served not to disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena. When the court or issuing agency so orders, the school shall not provide notice to the juvenile or his or her parents. [1998 c 269 § 12.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

13.40.500 Community juvenile accountability programs—Findings—Purpose. The legislature finds that meaningful community involvement is vital to the juvenile justice system's ability to respond to the serious problem of juvenile crime. Citizens and crime victims need to be active partners in responding to crime, in the management of resources, and in the disposition decisions regarding juvenile offenders in their community. Involvement of citizens and crime victims increase offender accountability and build healthier communities, which will reduce recidivism and crime rates in Washington state.

The legislature also finds that local governments are in the best position to develop, coordinate, and manage local community prevention, intervention, and corrections programs for juvenile offenders, and to determine local resource priorities. Local community management will build upon local values and increase local control of resources, encourage the use of a comprehensive range of community-based intervention strategies.

The primary purpose of RCW 13.40.500 through 13.40.540, the community juvenile accountability act, is to provide a continuum of community-based programs that emphasize the juvenile offender's accountability for his or her actions while assisting him or her in the development of skills necessary to function effectively and positively in the community in a manner consistent with public safety. [1997 c 338 § 60.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.510 Community juvenile accountability programs—Establishment—Proposals—Guidelines. (1) In order to receive funds under RCW 13.40.500 through 13.40.540, local governments may, through their respective agencies that administer funding for consolidated juvenile services, submit proposals that establish community juvenile accountability programs within their communities. These proposals must be submitted to the juvenile rehabilitation administration of the department of social and health services for certification.

(2) The proposals must:

(a) Demonstrate that the proposals were developed with the input of the local law and justice councils established under RCW 72.09.300;

(b) Describe how local community groups or members are involved in the implementation of the programs funded under RCW 13.40.500 through 13.40.540;

(c) Include a description of how the grant funds will contribute to the expected outcomes of the program and the reduction of youth violence and juvenile crime in their community. Data approaches are not required to be replicated if the networks have information that addresses risks in the community for juvenile offenders.

(3) A local government receiving a grant under this section shall agree that any funds received must be used efficiently to encourage the use of community-based programs that reduce the reliance on secure confinement as the sole means of holding juvenile offenders accountable for their crimes. The local government shall also agree to account for the expenditure of all funds received under the grant and to submit to audits for compliance with the grant criteria developed under RCW 13.40.520.

(4) The juvenile rehabilitation administration, in consultation with the Washington association of juvenile court administrators and the state law and justice advisory council, shall establish guidelines for programs that may be funded under RCW 13.40.500 through 13.40.540. The guidelines must:

(a) Target diverted and adjudicated juvenile offenders;

(b) Include assessment methods to determine services, programs, and intervention strategies most likely to change behaviors and norms of juvenile offenders;

(c) Provide maximum structured supervision in the community. Programs should use natural surveillance and community guardians such as employers, relatives, teachers, clergy, and community mentors to the greatest extent possible;

(d) Promote good work ethic values and educational skills and competencies necessary for the juvenile offender to function effectively and positively in the community;

(e) Maximize the efficient delivery of treatment services aimed at reducing risk factors associated with the commission of juvenile offenses;

(f) Maximize the reintegration of the juvenile offender into the community upon release from confinement;

(g) Maximize the juvenile offender's opportunities to make full restitution to the victims and amends to the community;

(h) Support and encourage increased court discretion in imposing community-based intervention strategies;

(i) Be compatible with research that shows which prevention and early intervention strategies work with juvenile offenders;

(j) Be outcome-based in that it describes what outcomes will be achieved or what outcomes have already been achieved;

(k) Include an evaluation component; and

(l) Recognize the diversity of local needs.

(5) The state law and justice advisory council may provide support and technical assistance to local governments for training and education regarding community-based prevention and intervention strategies. [2010 1st sp.s. c 7 § 62; 1997 c 338 § 61.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.520 Community juvenile accountability programs—Grants. (1) The state may make grants to local governments for the provision of community-based programs for juvenile offenders. The grants must be made under a grant formula developed by the juvenile rehabilitation administration, in consultation with the Washington association of juvenile court administrators.

(2) Upon certification by the juvenile rehabilitation administration that a proposal satisfies the application and selection criteria, grant funds will be distributed to the local government agency that administers funding for consolidated juvenile services. [1997 c 338 § 62.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.530 Community juvenile accountability programs—Effectiveness standards. The legislature recognizes the importance of evaluation and outcome measurements of programs serving juvenile offenders in order to ensure cost-effective use of public funds.

The Washington state institute for public policy shall develop standards for measuring the effectiveness of juvenile accountability programs established and approved under RCW 13.40.510. The standards must be developed and presented to the governor and legislature not later than January 1, 1998. The standards must include methods for measuring success factors following intervention. Success factors include, but are not limited to, continued use of alcohol or controlled substances, arrests, violations of terms of community supervision, convictions for subsequent offenses, and restitution to victims. [1997 c 338 § 63.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.540 Community juvenile accountability programs—Information collection—Report. (1) Each community juvenile accountability program approved and funded under RCW 13.40.500 through 13.40.540 shall comply with the information collection requirements in subsection (2) of this section and the reporting requirements in subsection (3) of this section.

(2) The information collected by each community juvenile accountability program must include, at a minimum for each juvenile participant: (a) The name, date of birth, gender, social security number, and, when available, the juvenile information system (JUVIS) control number; (b) an initial intake assessment of each juvenile participating in the program; (c) a list of all juveniles who completed the program; and (d) an assessment upon completion or termination of each juvenile, including outcomes and, where applicable, reasons for termination.

(3) The juvenile rehabilitation administration shall annually compile the data and report to the legislature on: (a) The programs funded under RCW 13.40.500 through 13.40.540; (b) the total cost for each funded program and cost per juvenile;

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and (c) the essential elements of the program. [1997 c 338 § 64.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.550 Community juvenile accountability programs—Short title. RCW 13.40.500 through 13.40.540 may be known as the community juvenile accountability act. [1997 c 338 § 66.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.560 Juvenile accountability incentive account. The juvenile accountability incentive account is created in the custody of the state treasurer. Federal awards for juvenile accountability incentives received by the secretary of the department of social and health services shall be deposited into the account. Interest earned from the inception of the trust account shall be deposited in the account. Expenditures from the account may be used only for the purposes specified in the federal award or awards. Moneys in the account may be spent only after appropriation. [1999 c 182 § 1.]

13.40.570 Sexual misconduct by state employees, contractors. (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an offender has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an offender has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any offender.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an offender, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an offender. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices

and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with offenders. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an offender against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Offender" means a person under the jurisdiction or supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010. [2005 c 274 § 210; 1999 c 72 § 1.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

13.40.580 Youth courts—Diversion. Youth courts provide a diversion for cases involving juvenile offenders, in which participants, under the supervision of an adult coordinator, may serve in various capacities within the program, acting in the role of jurors, lawyers, bailiffs, clerks, and judges. Youths who appear before youth courts are youths eligible for diversion pursuant to *RCW 13.40.070 (6) and (7). Youth courts have no jurisdiction except as provided for in chapter 237, Laws of 2002. Youth courts are diversion units and not courts established under Article IV of the state Constitution. [2002 c 237 § 9.]

*Reviser's note: RCW 13.40.070 was amended by 2010 c 289 § 7, changing subsection (7) to subsection (8).

13.40.590 Youth court programs. (1) The administrative office of the courts shall encourage the juvenile courts to work with cities and counties to implement, expand, or use youth court programs for juveniles who commit diversion-eligible offenses, civil, or traffic infractions. Program operations of youth court programs may be funded by government and private grants. Youth court programs are limited to those that:

(a) Are developed using the guidelines for creating and operating youth court programs developed by nationally recognized experts in youth court projects;

(b) Target offenders age eight through seventeen; and

(c) Emphasize the following principles:

(i) Youth must be held accountable for their problem behavior;

(ii) Youth must be educated about the impact their actions have on themselves and others including their victims, their families, and their community;

(iii) Youth must develop skills to resolve problems with their peers more effectively; and

(iv) Youth should be provided a meaningful forum to practice and enhance newly developed skills.

(2) Youth court programs under this section may be established by private nonprofit organizations and schools, upon prior approval and under the supervision of juvenile court. [2002 c 237 § 10.]

13.40.600 Youth court jurisdiction. (1) Youth courts have authority over juveniles ages eight through seventeen who:

(a) Along with their parent, guardian, or legal custodian, voluntarily and in writing request youth court involvement;

(b) Admit they have committed the offense they are referred for;

(c) Along with their parent, guardian, or legal custodian, waive any privilege against self-incrimination concerning the offense; and

(d) Along with their parent, guardian, or legal custodian, agree to comply with the youth court disposition of the case.

(2) Youth courts shall not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including a youth with a matter pending before the juvenile court but which has not yet been adjudicated.

(3) Youth courts may decline to accept a youth for youth court disposition for any reason and may terminate a youth from youth court participation at any time.

(4) A youth or his or her parent, guardian, or legal custodian may withdraw from the youth court process at any time.

(5) Youth courts shall give any victims of a juvenile the opportunity to be notified, present, and heard in any youth court proceeding. [2002 c 237 § 11.]

13.40.610 Youth court notification of satisfaction of conditions. Youth court may not notify the juvenile court of satisfaction of conditions until all ordered restitution has been paid. [2002 c 237 § 12.]

13.40.620 Appearance before youth court with parent, guardian, or legal custodian. Every youth appearing

before a youth court shall be accompanied by his or her parent, guardian, or legal custodian. [2002 c 237 § 13.]

13.40.630 Youth court dispositions. (1) Youth court dispositional options include those delineated in RCW 13.40.080, and may also include:

- (a) Participating in law-related education classes, appropriate counseling, treatment, or other education [educational] programs;
- (b) Providing periodic reports to the youth court;
- (c) Participating in mentoring programs;
- (d) Serving as a participant in future youth court proceedings;
- (e) Writing apology letters; or
- (f) Writing essays.

(2) Youth courts shall not impose a term of confinement or detention. Youth courts may require that the youth pay reasonable fees to participate in youth court and in classes, counseling, treatment, or other educational programs that are the disposition of the youth court.

(3) A youth court disposition shall be completed within one hundred eighty days from the date of referral.

(4) Pursuant to RCW 13.40.080(1), a youth court disposition shall be reduced to writing and signed by the youth and his or her parent, guardian, or legal custodian accepting the disposition terms.

(5) [A] youth court shall notify the juvenile court upon successful or unsuccessful completion of the disposition.

(6) [A] youth court shall notify the prosecutor or probation counselor of a failure to successfully complete the youth court disposition. [2002 c 237 § 14.]

13.40.640 Youth court nonrefundable fee. A youth court may require that a youth pay a nonrefundable fee, not exceeding thirty dollars, to cover the costs of administering the program. The fee may be reduced or waived for a participant. Fees shall be paid to and accounted for by the youth court. [2002 c 237 § 15.]

13.40.650 Use of restraints on pregnant youth in custody—Allowed in extraordinary circumstances. (1) Except in extraordinary circumstances, no restraints of any kind may be used on any pregnant youth in an institution or detention facility covered by this chapter during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery. For purposes of this section, "extraordinary circumstances" exist where an employee at an institution or detention facility makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant youth from escaping, or from injuring herself, medical or correctional personnel, or others. In the event the employee of the institution or detention facility determines that extraordinary circumstances exist and restraints are used, the employee of the institution or detention facility must fully document in writing the reasons that he or she determined such extraordinary circumstances existed such that restraints were used. As part of this documentation, the employee of the institution or detention facility must also include the kind of restraints used and the rea-

sons those restraints were considered the least restrictive available and the most reasonable under the circumstances.

(2) While the pregnant youth is in labor or in childbirth no restraints of any kind may be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of a patient by treating physicians licensed under Title 18 RCW.

(3) Anytime restraints are permitted to be used on a pregnant youth, the restraints must be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any youth known to be pregnant.

(4) No employee of the institution or detention facility shall be present in the room during the pregnant youth's labor or childbirth, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female, if practicable.

(5) If the doctor, nurse, or other health professional treating the pregnant youth requests that restraints not be used, the employee of the institution or detention facility accompanying the pregnant youth shall immediately remove all restraints. [2010 c 181 § 11.]

13.40.651 Use of restraints on pregnant youth in custody—Provision of information to staff and pregnant youth in custody. (1) The director of the juvenile detention facility shall provide an informational packet about the requirements of chapter 181, Laws of 2010 to all medical staff and nonmedical staff who are involved in the transportation of youth who are pregnant, as well as such other staff as appropriate. The informational packet provided to staff under this section shall be developed as provided in RCW 70.48.800.

(2) The director shall cause the requirements of chapter 181, Laws of 2010 to be provided to all youth who are pregnant, at the time the facility assumes custody of the person. In addition, the facility shall cause a notice containing the requirements of chapter 181, Laws of 2010 to be posted in conspicuous locations in the detention facilities, including but not limited to the locations in which medical care is provided within the facilities. [2010 c 181 § 12.]

13.40.700 Juvenile gang courts—Minimum requirements—Admission—Individualized plan—Completion. (1) Counties may establish and operate juvenile gang courts.

(2) For the purposes of this section, "juvenile gang court" means a court that has special calendars or dockets designed to achieve a reduction in gang-related offenses among juvenile offenders by increasing their likelihood for successful rehabilitation through early, continuous, and judicially supervised and integrated evidence-based services proven to reduce juvenile recidivism and gang involvement or through the use of research-based or promising practices identified by the Washington state partnership council on juvenile justice.

(3) Any county that establishes a juvenile gang court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The juvenile gang court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(a) The juvenile offender participates in gang activity, is repeatedly in the company of known gang members, or openly admits that he or she has been admitted to a gang;

(b) The juvenile offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(c) The juvenile offender is not currently charged with an offense:

(i) That is a class A felony offense;

(ii) That is a sex offense;

(iii) During which the juvenile offender intentionally discharged, threatened to discharge, or attempted to discharge a firearm in furtherance of the offense;

(iv) That subjects the juvenile offender to adult court original jurisdiction pursuant to RCW 13.04.030(1)(e)(v); or

(v) That constitutes assault of a child in the second degree.

(4) The court, the prosecutor, and the juvenile must agree to the juvenile's admission to a gang court created under this section.

(5) For the purposes of chapter 146, Laws of 2012, a "gang" means a group which consists of three or more persons; has identifiable leadership; and on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(6) The juvenile offender who is admitted to juvenile gang court must:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with the requirements of the juvenile gang court; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

(7) The adjudicatory hearing shall be limited to a reading of the court's record.

(8) Following the stipulation to the facts in the police report, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(9) Upon admission to juvenile gang court, an individualized plan shall be developed for the juvenile, identifying goals for the juvenile and a team to support the juvenile, which may include mental health and chemical dependency treatment providers, a probation officer, teachers, defense counsel, the prosecuting attorney, law enforcement, guardians or family members, and other participants deemed appropriate by the court. The individualized plan shall include a requirement that the juvenile remain in the gang court program for at least twelve months. At least one member of the support team must have daily contact with the juvenile.

(10) Upon successful completion of the juvenile gang court requirements, the conviction entered by the court shall be vacated and the charge shall be dismissed with prejudice.

(11) A juvenile may only be admitted to juvenile gang court once. If the juvenile fails to complete the requirements of gang court after being admitted, or successfully completes the requirements of gang court after being admitted, the juvenile may not be admitted again.

(12) If the juvenile fails to complete the juvenile gang court requirements, the court shall enter an order of disposition pursuant to RCW 13.40.0357. [2012 c 146 § 2.]

Findings—2012 c 146: "The legislature finds that juvenile gang activity in Washington state poses a significant threat to communities and to the positive development of juveniles as they mature into adulthood. Thus, a strategic and collaborative approach is needed to address the problem of juvenile gangs. Many juveniles who become involved in gang activity have been exposed to risk factors such as antisocial behavior, alcohol and drug use, mental health problems, and victimization. Evidence-based and research-based gang intervention programs and strategies can provide services to these youth such as mental health counseling, education, chemical dependency treatment, and skill building. The legislature further finds that a court specifically developed to facilitate the delivery of these critical services to gang-involved juveniles and that provides a supportive team will assist juveniles in breaking out of a cycle of gang activity, reduce criminal activity, and increase their ability to develop into successful adults." [2012 c 146 § 1.]

13.40.710 Juvenile gang courts—Data—Reports. (1) Counties that create a juvenile gang court pursuant to RCW 13.40.700 shall track and document data regarding the criteria that led to a juvenile's admission to gang court, the successful and unsuccessful completion of juvenile gang court requirements, and any subsequent criminal charges of juvenile gang court participants and provide such data to the administrative office of the courts.

(2) Subject to the availability of funds appropriated for this purpose, the administrative office of the courts shall study the data provided by the counties pursuant to subsection (1) of this section and report to the appropriate legislative committees regarding the recidivism outcomes for juvenile gang court participants. A preliminary report shall be completed by December 1, 2013. A final report shall be completed by December 1, 2015. [2012 c 146 § 3.]

Findings—2012 c 146: See note following RCW 13.40.700.

13.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 43.]

Chapter 13.50 RCW

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections

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Office of the family and children’s ombudsman: Chapter 43.06A RCW.

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children’s oversight committee, the office of the family and children’s ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of

the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court shall release to the caseload forecast council records needed for its research and data-gathering functions. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual’s written permission.

(10) Requirements in this chapter relating to the court’s authority to compel disclosure shall not apply to the legislative children’s oversight committee or the office of the family and children’s ombudsman.

(11) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

(12) The court shall release to the Washington state office of public defense records needed to implement the agency’s oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records. [2011 1st sp.s. c 40 § 30; 2010 c 150 § 3; 2009 c 440 § 1; 1998 c 269 § 4. Prior: 1997 c 386 § 21;

1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.50.050 Records relating to commission of juvenile offenses—Maintenance of, access to, and destruction—Release of information to schools. (1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

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

(8) The juvenile court and the prosecutor may set up and maintain a central recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central recordkeeping system may be computer-

ized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12)(a) The court shall not grant any motion to seal records for class A offenses made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless:

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

(vi) Full restitution has been paid.

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and

(v) Full restitution has been paid.

(c) Notwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution has been paid and the person is eighteen years of age or older at the time of the motion.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14)(a) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(b) In the event the subject of the juvenile records receives a full and unconditional pardon, the proceedings in the matter upon which the pardon has been granted shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events upon which the pardon was received. Any agency shall reply to any inquiry concerning the records pertaining to the events for which the subject received a pardon that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(17)(a)(i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eli-

gible for destruction. Juvenile records are eligible for destruction when:

(A) The person who is the subject of the information or complaint is at least eighteen years of age;

(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;

(C) Two years have elapsed since completion of the agreement or counsel and release;

(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and

(E) There is no restitution owing in the case.

(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(b) All records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within thirty days of being notified by the governor's office that the subject of those records received a full and unconditional pardon by the governor.

(c) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(d) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection (17)(c) or (d) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (17)(c) or (d) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older or pursuant to subsection (17)(a) of this section.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(23) Except for subsection (17)(b) of this section, no identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. [2012 c 177 § 2. Prior: 2011 c 338 § 4; 2011 c 333 § 4; 2010 c 150 § 2; 2008 c 221 § 1; 2004 c 42 § 1; prior: 2001 c 175 § 1; 2001 c 174 § 1; 2001 c 49 § 2; 1999 c 198 § 4; 1997 c 338 § 40; 1992 c 188 § 7; 1990 c 3 § 125; 1987 c 450 § 8; 1986 c 257 § 33; 1984 c 43 § 1; 1983 c 191 § 19; 1981 c 299 § 19; 1979 c 155 § 9.]

Rules of court: *Superior Court Criminal Rules (CrR), generally. Discovery: CrR 4.7.*

Application—2011 c 333: "RCW 13.50.050 (14)(b) and (17)(b) apply to all records of a full and unconditional pardon and should be applied retroactively as well as prospectively." [2011 c 333 § 5.]

Findings—Intent—2011 c 333: See note following RCW 19.182.040.

Intent—2001 c 49: "The legislature intends to change the results of the holding of *State v. T. K.*, 139 Wn. 2d 320 (1999), and have any motion made after July 1, 1997, to seal juvenile records be determined by the provisions of RCW 13.50.050 in effect after July 1, 1997." [2001 c 49 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Additional notes found at www.leg.wa.gov

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited. (1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of social and health services may release information retained in the course of conducting child protective services investigations to a family or juvenile court hearing a petition for custody under chapter 26.10 RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) A contracting agency or service provider of the department of social and health services that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombudsman information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the

consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(7) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection (7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(11) No unfounded allegation of child abuse or neglect as defined in *RCW 26.44.020(12) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider. [2003 c 105 § 2; 2001 c 162 § 2; 2000 c 162 § 18; 1999 c 390 § 3; 1997 c 386 § 22; 1995 c 311 § 16; 1990 c 246 § 9; 1983 c 191 § 20; 1979 c 155 § 10.]

*Reviser's note: RCW 26.44.020 was amended by 2007 c 220 § 1, changing subsection (12) to subsection (1), effective October 1, 2008.

Additional notes found at www.leg.wa.gov

(2012 Ed.)

13.50.140 Disclosure of privileged information to office of the family and children's ombudsman—Privilege not waived as to others. Any communication or advice privileged under RCW 5.60.060 that is disclosed by the office of the attorney general or the department of social and health services to the office of the family and children's ombudsman may not be deemed to be a waiver of the privilege as to others. [1999 c 390 § 8.]

13.50.150 Confidential records—Expungement to protect due process rights. Nothing in this chapter shall be construed to prevent the expungement of any juvenile record ordered expunged by a court to preserve the due process rights of its subject. [1977 ex.s. c 291 § 13. Formerly RCW 13.04.276, see 1979 c 155 § 12.]

Additional notes found at www.leg.wa.gov

13.50.160 Disposition records—Provision to schools. Records of disposition for a juvenile offense must be provided to schools as provided in RCW 13.04.155. [1997 c 266 § 8.]

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

13.50.200 Records of motor vehicle operation violation forwarded. Notwithstanding any other provision of this chapter, whenever a child is arrested for a violation of any law, including municipal ordinances, regulating the operation of vehicles on the public highways, a copy of the traffic citation and a record of the action taken by the court shall be forwarded by the juvenile court to the department of licensing in the same manner as provided in RCW 46.20.270. [1979 c 155 § 13; 1977 ex.s. c 291 § 14. Formerly RCW 13.04.278.]

Additional notes found at www.leg.wa.gov

13.50.250 Records chapter applicable to. This chapter applies to all juvenile justice or care agency records created on or after July 1, 1978. [1979 c 155 § 11.]

Additional notes found at www.leg.wa.gov

Chapter 13.60 RCW

MISSING CHILDREN CLEARINGHOUSE

Sections

13.60.010	Missing children clearinghouse—Hot line—Distribution of information—Amber alert plan.
13.60.020	Entry of information on missing children into missing person computer network—Access.
13.60.030	Information and education regarding missing children—Plan.
13.60.040	Children receiving services from department of social and health services—Reporting by the department—Notification of child's whereabouts.
13.60.050	Endangered missing person advisory plan.
13.60.100	Task force on missing and exploited children—Findings, intent.
13.60.110	Task force on missing and exploited children—Establishment—Activities.
13.60.120	Task force on missing and exploited children—Advisory board.

13.60.010 Missing children clearinghouse—Hot line—Distribution of information—Amber alert plan. The Washington state patrol shall establish a missing children clearinghouse which shall include the maintenance and operation of a toll-free, twenty-four-hour telephone hotline.

The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children. The state patrol shall also maintain a regularly updated computerized link with national and other state-wide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an "amber alert plan," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in recovering abducted children.

"Child" or "children," as used in this chapter, means an individual under eighteen years of age. [2009 c 20 § 1; 1985 c 443 § 22.]

Additional notes found at www.leg.wa.gov

13.60.020 Entry of information on missing children into missing person computer network—Access. Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within twelve hours after notification of a missing child is received under *RCW 13.32A.050 (1), (3), or (4). The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate. [1985 c 443 § 23.]

*Reviser's note: RCW 13.32A.050 was amended by 1995 c 312 § 6, changing subsections (1), (3), and (4) to subsection (1)(a), (c), and (d), respectively.

Additional notes found at www.leg.wa.gov

13.60.030 Information and education regarding missing children—Plan. The superintendent of public instruction shall meet semiannually with the Washington state patrol to develop a coordinated plan for the distribution of information and education of teachers and students in the school districts of the state regarding the missing children problem in the state. The superintendent of public instruction shall encourage local school districts to cooperate by providing the state patrol information on any missing children that may be identified within the district. [1985 c 443 § 24.]

Additional notes found at www.leg.wa.gov

13.60.040 Children receiving services from department of social and health services—Reporting by the department—Notification of child's whereabouts. The department of social and health services shall develop a procedure for reporting missing children information to the missing children clearinghouse on children who are receiving departmental services in each of its administrative regions. The purpose of this procedure is to link parents to missing children. When the department has obtained information that a minor child has been located at a facility funded by the

department, the department shall notify the clearinghouse and the child's legal custodian, advising the custodian of the child's whereabouts or that the child is subject to a dependency action. The department shall inform the clearinghouse when reunification occurs. [1999 c 267 § 18.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

13.60.050 Endangered missing person advisory plan. Within existing resources, the Washington state patrol shall develop and implement a plan, commonly known as an "endangered missing person advisory plan," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in recovering endangered missing persons who do not qualify for inclusion in an amber alert. [2009 c 20 § 2.]

13.60.100 Task force on missing and exploited children—Findings, intent. The legislature finds a compelling need to address the problem of missing children, whether those children have been abducted by a stranger, are missing due to custodial interference, or are classified as runaways. Washington state ranks twelfth in the nation for active cases of missing juveniles and, at any given time, more than one thousand eight hundred Washington children are reported as missing. The potential for physical and psychological trauma to these children is extreme. Therefore, the legislature finds that it is paramount for the safety of these children that there be a concerted effort to resolve cases of missing and exploited children.

Due to the complexity of many child abduction cases, most law enforcement personnel are unprepared and lack adequate resources to successfully and efficiently investigate these crimes. Therefore, it is the intent of the legislature that a multiagency task force be established within the Washington state patrol, to be available to assist local jurisdictions in missing child cases through referrals, on-site assistance, case management, and training. The legislature intends that the task force will increase the effectiveness of a specific case investigation by drawing from the combined resources, knowledge, and technical expertise of the members of the task force. [1999 c 168 § 1.]

Additional notes found at www.leg.wa.gov

13.60.110 Task force on missing and exploited children—Establishment—Activities. (1) A task force on missing and exploited children is established in the Washington state patrol. The task force shall be under the direction of the chief of the state patrol.

(2) The task force is authorized to assist law enforcement agencies, upon request, in cases involving missing or exploited children by:

- (a) Direct assistance and case management;
- (b) Technical assistance;
- (c) Personnel training;
- (d) Referral for assistance from local, state, national, and international agencies; and

(e) Coordination and information sharing among local, state, interstate, and federal law enforcement and social service agencies.

(3) To maximize the efficiency and effectiveness of state resources and to improve interagency cooperation, the task force shall, where feasible, use existing facilities, systems, and staff made available by the state patrol and other local, state, interstate, and federal law enforcement and social service agencies. The chief of the state patrol may employ such additional personnel as are necessary for the work of the task force and may share personnel costs with other agencies.

(4) The chief of the state patrol shall seek public and private grants and gifts to support the work of the task force.

(5) For the purposes of RCW 13.60.100 through 13.60.120, "exploited children" means children under the age of eighteen who are employed, used, persuaded, induced, enticed, or coerced to engage in, or assist another person to engage in, sexually explicit conduct. "Exploited children" also means the rape, molestation, or use for prostitution of children under the age of eighteen. [2009 c 518 § 4; 1999 c 168 § 2.]

Additional notes found at www.leg.wa.gov

13.60.120 Task force on missing and exploited children—Advisory board. The advisory board on missing and exploited children is established to advise the chief of the Washington state patrol on the objectives, conduct, management, and coordination of the various activities of the task force on missing and exploited children.

(1) The chief of the state patrol shall appoint five members to the advisory board: (a) One member shall be a county prosecuting attorney or a representative and shall be appointed in consultation with the elected county prosecutors; (b) two members shall be a municipal police chief and a county sheriff, or their representatives, and shall be appointed in consultation with the association of sheriffs and police chiefs under RCW 36.28A.010; (c) one member shall be a representative of the state patrol; and (d) one member shall be a representative of parents of missing or exploited children.

(2) A sixth member of the board shall represent and be appointed by the attorney general.

(3) To improve interagency communication and coordination, the chief of the state patrol shall invite representatives of federal law enforcement agencies and state social service agencies to participate in the advisory board.

(4) The members of the board shall be qualified on the basis of knowledge and experience as may contribute to the effective performance of the board's duties. The board shall elect its own chair from among its members. Meetings of the board may be convened at the call of the chair or by a majority of the members.

(5) The term of each member of the board shall be two years and shall be conditioned upon the member retaining the official position from which the member was appointed. [1999 c 168 § 3.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

Chapter 13.64 RCW EMANCIPATION OF MINORS

Sections

13.64.010	Declaration of emancipation.
13.64.020	Petition for emancipation—Filing fees.
13.64.030	Service of petition—Notice—Date of hearing.
13.64.040	Hearing on petition.
13.64.050	Emancipation decree—Certified copy—Notation of emancipated status.
13.64.060	Power and capacity of emancipated minor.
13.64.070	Declaration of emancipation—Voidable.
13.64.080	Forms to initiate petition of emancipation.
13.64.900	Effective date—1993 c 294.
13.64.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

13.64.010 Declaration of emancipation. Any minor who is sixteen years of age or older and who is a resident of this state may petition in the superior court for a declaration of emancipation. [1993 c 294 § 1.]

13.64.020 Petition for emancipation—Filing fees. (1) A petition for emancipation shall be signed and verified by the petitioner, and shall include the following information: (a) The full name of the petitioner, the petitioner's birthdate, and the state and county of birth; (b) a certified copy of the petitioner's birth certificate; (c) the name and last known address of the petitioner's parent or parents, guardian, or custodian; (d) the petitioner's present address, and length of residence at that address; (e) a declaration by the petitioner indicating that he or she has the ability to manage his or her financial affairs, including any supporting information; and (f) a declaration by the petitioner indicating that he or she has the ability to manage his or her personal, social, educational, and nonfinancial affairs, including any supporting information.

(2) Fees for this section are set under RCW 36.18.014. [1995 c 292 § 7; 1993 c 294 § 2.]

13.64.030 Service of petition—Notice—Date of hearing. The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner's parent or parents, guardian, or custodian at least fifteen days before the emancipation hearing. No summons shall be required. Service shall be waived if proof is made to the court that the address of the parent or parents, guardian, or custodian is unavailable or unascertainable. The petitioner shall also serve notice of the hearing on the department if the petitioner is subject to dependency disposition order under RCW 13.34.130. The hearing shall be held no later than sixty days after the date on which the petition is filed. [1993 c 294 § 3.]

13.64.040 Hearing on petition. (1) The hearing on the petition shall be before a judicial officer, sitting without a jury. Prior to the presentation of proof the judicial officer shall determine whether: (a) The petitioning minor understands the consequences of the petition regarding his or her legal rights and responsibilities; (b) a guardian ad litem should be appointed to investigate the allegations of the petition and file a report with the court.

(2) For the purposes of this section, the term "judicial officer" means: (a) A judge; (b) a superior court commissioner of a unified family court if the county operates a unified family court; or (c) any superior court commissioner if the county does not operate a unified family court. The term

does not include a judge pro tempore. [2001 c 161 § 1; 1993 c 294 § 4.]

13.64.050 Emancipation decree—Certified copy—Notation of emancipated status. (1) The court shall grant the petition for emancipation, except as provided in subsection (2) of this section, if the petitioner proves the following facts by clear and convincing evidence: (a) That the petitioner is sixteen years of age or older; (b) that the petitioner is a resident of the state; (c) that the petitioner has the ability to manage his or her financial affairs; and (d) that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

(2) A parent, guardian, custodian, or in the case of a dependent minor, the department, may oppose the petition for emancipation. The court shall deny the petition unless it finds, by clear and convincing evidence, that denial of the grant of emancipation would be detrimental to the interests of the minor.

(3) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree. The decree shall instruct the petitioner to obtain a Washington driver's license or a Washington identification card and direct the department of licensing make a notation of the emancipated status on the license or identification card. [1993 c 294 § 5.]

13.64.060 Power and capacity of emancipated minor.

(1) An emancipated minor shall be considered to have the power and capacity of an adult, except as provided in subsection (2) of this section. A minor shall be considered emancipated for the purposes of, but not limited to:

(a) The termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligations imposed because of marital dissolution;

(b) The right to sue or be sued in his or her own name;

(c) The right to retain his or her own earnings;

(d) The right to establish a separate residence or domicile;

(e) The right to enter into nonvoidable contracts;

(f) The right to act autonomously, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;

(g) The right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status; and

(h) The right to give informed consent for receiving health care services.

(2) An emancipated minor shall not be considered an adult for: (a) The purposes of the adult criminal laws of the state unless the decline of jurisdiction procedures contained in RCW 13.40.110 are used or the minor is tried in criminal court pursuant to *RCW 13.04.030(1)(e)(iv); (b) the criminal laws of the state when the emancipated minor is a victim and the age of the victim is an element of the offense; or (c) those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of firearms, and other health and safety regulations relevant to the minor because of the minor's age. [1994 sp.s. c 7 § 436; 1993 c 294 § 6.]

*Reviser's note: RCW 13.04.030 was amended by 1997 c 341 § 3, changing subsection (1)(e)(iv) to subsection (1)(e)(v).

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

13.64.070 Declaration of emancipation—Voidable.

A declaration of emancipation obtained by fraud is voidable. The voiding of any such declaration shall not affect any obligations, rights, or interests that arose during the period the declaration was in effect. [1993 c 294 § 7.]

13.64.080 Forms to initiate petition of emancipation.

The administrative office of the courts shall prepare and distribute to the county court clerks appropriate forms for minors seeking to initiate a petition of emancipation. [2005 c 282 § 28; 1993 c 294 § 8.]

13.64.900 Effective date—1993 c 294. This act shall take effect January 1, 1994. [1993 c 294 § 11.]

13.64.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 44.]

Chapter 13.80 RCW

LEARNING AND LIFE SKILLS GRANT PROGRAM

Sections

13.80.010	Purpose.
13.80.020	Definitions.
13.80.030	Program grants.
13.80.040	Rules.
13.80.050	Evaluation.

13.80.010 Purpose. The learning and life skills grant program is created. The purpose of the program is to provide services, to the extent funds are appropriated, for court-involved youth under the age of twenty-one to help the youth attain the necessary life skills and educational skills to obtain a certificate of educational competency, obtain employment, return to a school program, or enter a postsecondary education or job-training program. [1994 c 152 § 1.]

13.80.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Court-involved youth" means those youth under the age of twenty-one who, within the past twenty-four months:

(a) Have served a court-imposed sentence;
(b) Are or have been on probation or parole; or
(c) Are involved in a legal proceeding in which the youth may be found to have committed a criminal or juvenile offense and are not participating in a diversion agreement under RCW 13.40.080.

(2) "Department" means the department of social and health services. [1994 c 152 § 2.]

13.80.030 Program grants. (1) The learning and life skills program grants shall be administered by the department.

(2) The department shall select individual school districts or groups of school districts through an educational service district that agree to establish a program for court-involved youth. To be eligible for grants, the district shall agree to expend for the program no less than the amount of state funds received on a full-time equivalent student basis for the number of full-time equivalent students participating in the program. The school district shall also transmit to the program any federal funds received for students participating in the program. During the 1994-95 school year, only school districts or educational service districts operating a program for court-involved youth on or before June 1, 1993, are eligible for grants.

(3) The department shall grant funds, to the extent funds are appropriated, to selected districts for the district to provide or contract for the provision of facilities and case management and counseling services for students in the program.

(4) In selecting districts, the department shall require districts to enter into agreements. Districts participating in the program shall agree to the following: To serve only court-involved youth in the program and give priority to those students who have few other educational options; to design a program to meet the specific needs of court-involved youth generally and the specific needs of individual students; to collaborate with the county courts and local community organizations; and to define program goals clearly.

(5) The department has the authority to withhold grant funds if the terms of the agreement are not met.

(6) Selected districts shall establish procedures to keep daily attendance records for students participating in the program.

(7) Selected districts shall agree to participate fully in an evaluation of the program by the department. [1994 c 152 § 3.]

13.80.040 Rules. The department may adopt rules, as necessary, to carry out its duties under this program. [1994 c 152 § 4.]

13.80.050 Evaluation. The department shall periodically evaluate the program including but not limited to providing data on the youth served, the type and extent of court involvement, the type of services provided, the length of stay of each student in the program, the academic progress of the youth, the recidivism rate, and rates of employment and enrollment in postsecondary education. [1994 c 152 § 5.]

Title 14

AERONAUTICS

Chapters

- 14.07 **Municipal airports—1941 act.**
- 14.08 **Municipal airports—1945 act.**
- 14.12 **Airport zoning.**
- 14.16 **Aircraft and airman regulations.**
- 14.20 **Aircraft dealers.**
- 14.30 **Western regional short-haul air transportation compact.**

Aeronautics, department of transportation, division of: Chapter 47.68 RCW.

Aircraft excise tax: Chapter 82.48 RCW.

Assessment of air transportation companies for property tax purposes: Chapter 84.12 RCW.

Lease of county property for airport purposes: RCW 36.34.180.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Recycling: RCW 70.93.095.

Chapter 14.07 RCW

MUNICIPAL AIRPORTS—1941 ACT

Sections

- 14.07.010 General powers—Municipal purpose and public use.
- 14.07.020 Acquisition of property—Eminent domain—Exemption.
- 14.07.030 Appropriation of money or conveyance of property to other municipalities.
- 14.07.040 Acts ratified and confirmed—Chapter cumulative.

Lease of property for airport purposes

county property: RCW 36.34.180.

port district property: RCW 53.08.080.

Municipal airports—1945 act: Chapter 14.08 RCW.

14.07.010 General powers—Municipal purpose and public use. Any city, town, port district or county is hereby authorized and empowered by and through their appropriate corporate authorities to acquire, maintain and operate, within or without the boundaries of the counties in which such city, town or port district is situated, sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes, and seaplanes for the aerial transportation of persons, property and mail or for use of military and naval aircraft, either jointly with another city, town, port district, county, the state of Washington, or the United States of America or severally, and the same is hereby declared to be a municipal purpose and a public use. [1941 c 21 § 1; Rem. Supp. 1941 § 2722-8. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

14.07.020 Acquisition of property—Eminent domain—Exemption. Such municipalities may also acquire by purchase, condemnation or lease, lands and other property for said purpose and dispose of such lands and other property, including property acquired by tax foreclosure proceedings, by sale or gift for public use to any city, town, port district,

county, the state of Washington or the United States of America. Any city, town, port district and county is hereby empowered to acquire lands and other property for said purpose by the exercise of the power of eminent domain under the procedure that is or shall be provided by law for the condemnation and appropriation of private property for any of their respective corporate uses, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated, or otherwise held to public use: PROVIDED, HOWEVER, That nothing in this chapter shall authorize or entitle any city, town, port district or county to acquire by eminent domain any site or other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes for aerial transportation of persons, property, mail or military or naval aircraft, now or hereafter owned by any other city, town, port district or county. [1941 c 21 § 2; Rem. Supp. 1941 § 2722-9. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

14.07.030 Appropriation of money or conveyance of property to other municipalities. Any city, town, port district or county is authorized and empowered by and through their corporate authorities to appropriate sums of money and pay the same to any other city, town, port district or county, or deed and convey property already owned to such city, town, port district or county, for use in acquiring and maintaining sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes and seaplanes for the aerial transportation of persons, property, mail or military and naval aircraft and need not require consideration other than the benefit which may be derived by the city, town, port district or county on account of the use therefor and development of such property for said purposes. [1941 c 21 § 3; Rem. Supp. 1941 § 2722-10.]

14.07.040 Acts ratified and confirmed—Chapter cumulative. All acts of any such municipality in the exercise or attempted exercise of any powers herein conferred are hereby ratified and confirmed. The provisions of this chapter shall be cumulative and nothing herein contained shall abridge or limit the powers of the city, town, port district or county under existing law. [1941 c 21 § 4; Rem. Supp. 1941 § 2722-11. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

Chapter 14.08 RCW

MUNICIPAL AIRPORTS—1945 ACT

Sections

- 14.08.010 Definition—"Municipality."
- 14.08.015 Definitions.
- 14.08.020 Airports a public purpose.

- 14.08.030 Acquisition of property and easements—Eminent domain—Encroachments prohibited.
- 14.08.070 Prior acquisition of airport property validated.
- 14.08.080 Method of defraying cost.
- 14.08.090 Issuance of bonds—Security.
- 14.08.100 Raising of funds and disposition of revenue.
- 14.08.112 Revenue bonds authorized—Purpose—Special fund—Redemption.
- 14.08.114 Issuance of funding or refunding bonds authorized.
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- 14.08.120 Specific powers of municipalities operating airports.
- 14.08.122 Adoption of regulations by airport operator for airport rental and use and collection of charges.
- 14.08.160 Federal aid.
- 14.08.190 Establishment of airports on waters and reclaimed land.
- 14.08.200 Joint operations.
- 14.08.290 County airport districts authorized.
- 14.08.300 Governing body of district.
- 14.08.302 Board of airport district commissioners—Petition—Order establishing.
- 14.08.304 Board of airport district commissioners—Members—Election—Terms—Expenses.
- 14.08.310 Assistance to other municipalities.
- 14.08.330 Jurisdiction of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement.
- 14.08.340 Interpretation and construction.
- 14.08.350 Severability—1945 c 182.
- 14.08.360 Short title.
- 14.08.370 Repeal.

Lease of property for airport purposes

county property: RCW 36.34.180.

port district property: RCW 53.08.080.

Municipal airports—1941 act: Chapter 14.07 RCW.

14.08.010 Definition—"Municipality." (1) For the purpose of this chapter, unless herein specifically otherwise provided, the definitions of words, terms and phrases appearing in the state aeronautic department act of this state are hereby adopted.

(2) As used in this chapter, unless the context otherwise requires: "Municipality" means any county, city, town, airport district, or port district of this state; "airport purposes" means and includes airport, restricted landing area and other air navigation facility purposes. [1987 c 254 § 3; 1945 c 182 § 1; Rem. Supp. 1945 § 2722-30.]

Reviser's note: The state aeronautic department act (chapter 252, Laws of 1945) contained no definitions. It was repealed by chapter 165, Laws of 1947, codified herein as chapter 47.68 RCW.

14.08.015 Definitions. (1) "Airport charges" means charges of an airport operator for tie-downs, landing fees, the occupation of a hangar by an aircraft, and all other charges owing or to become owing under a contract between an aircraft owner and an airport operator or under an officially adopted regulation and/or tariff including, but not limited to, the cost of sale and related expenses.

(2) "Aircraft" means every species of aircraft or other mechanical device capable of being used for the purpose of aerial flight.

(3) "Airport operator" means any municipality as defined in RCW 14.08.010(2) or state agency which owns and/or operates an airport.

(4) "Owner" means (a) every natural person, firm, partnership, corporation, association, trust, estate, or organization, or agent thereof with actual or apparent authority, who expressly or impliedly contracts for use of airport property for landing, parking, or hangaring aircraft, and (b) includes

the registered owner or owners and lienholders of record with the federal aviation administration. [1987 c 254 § 1.]

14.08.020 Airports a public purpose. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public, governmental, county and municipal purposes and as a matter of public necessity. [1961 c 74 § 1; 1945 c 182 § 3; Rem. Supp. 1945 § 2722-32.]

14.08.030 Acquisition of property and easements—Eminent domain—Encroachments prohibited. (1) Every municipality is hereby authorized, through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(2) Property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. Any title to real property so acquired shall be in

fee simple, absolute and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain, shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of this chapter, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

(4) It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of this section. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in this section provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing. [1945 c 182 § 2; Rem. Supp. 1945 § 2722-31. Formerly RCW 14.08.030, 14.08.040, 14.08.050, and 14.08.060.]

Reviser's note: Caption for 1945 c 182 § 2, reads as follows: "Municipalities may acquire airports."

14.08.070 Prior acquisition of airport property validated. Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. [1945 c 182 § 4; Rem. Supp. 1945 § 2722-33.]

14.08.080 Method of defraying cost. The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of this chapter may be paid for by appropriation of moneys available there-

for, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The word "cost" includes awards in condemnation proceedings and rentals where an acquisition is by lease. [1945 c 182 § 5; Rem. Supp. 1945 § 2722-34.]

Reviser's note: Caption for 1945 c 182 § 5 reads as follows: "Purchase price and costs of improvement may be paid from appropriations or bond issues."

14.08.090 Issuance of bonds—Security. Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation prescribed by the Constitution and laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally, secured by the revenues of the airport, a mortgage on facilities, or a general tax levy as allowed by law, if the plan and system resolution are approved by the secretary of transportation or the state auditor. [1995 c 301 § 32; 1984 c 7 § 4; 1945 c 182 § 6; Rem. Supp. 1945 § 2722-35.]

Levy of taxes: Chapter 84.52 RCW.

Public contracts and indebtedness: Title 39 RCW.

Additional notes found at www.leg.wa.gov

14.08.100 Raising of funds and disposition of revenue. (1) The governing bodies having power to appropriate moneys within the municipalities in this state for the purpose of acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of this chapter, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, moneys sufficient to carry out therein the provisions of this chapter.

(2) The revenues obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance and operating expenses thereof, and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenues in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities, and to construct, maintain, lease, and otherwise finance buildings and facilities for industrial or commercial use: PROVIDED, That such portion of the airport property to be devoted to said industrial or commercial use be first found by the governing body to be not required for airport purposes. [1959 c 231 § 1; 1945 c 182 § 7; Rem. Supp. 1945 § 2722-36. Formerly RCW 14.08.100, 14.08.110.]

14.08.112 Revenue bonds authorized—Purpose—Special fund—Redemption. (1) Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control, and operate an airport or other air navigation facility, are hereby authorized to issue revenue bonds to provide part or all of the funds required to accomplish the powers granted them by chapter 14.08 RCW, and to construct, acquire by purchase or condemnation, equip, add to, extend, enlarge, improve, replace and repair airports, facilities and structures thereon including but not being lim-

ited to facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and other properties incidental to the operation of airports and to pay all costs incidental thereto.

The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on the bonds of each issue, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use, and operation of the airport and all airport facilities and structures thereon and used and operated in connection therewith, including but not being limited to fees charged for all uses of the airport and facilities, rentals derived from leases of part or all of the airport, buildings and any or all air navigation facilities thereon, fees derived from concessions granted, and proceeds of sales of part or all of the airport and any or all buildings and structures thereon or equipment therefor, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Revenue bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

Each revenue bond and any interest coupon attached thereto shall name the fund from which it is payable and state upon its face that it is only payable therefrom; however, all revenue bonds and any interest coupons issued under RCW 14.08.112 and 14.08.114 shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state. Each issue of revenue bonds may be bearer coupon bonds or may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030; shall be in the denomination or denominations the legislative body of the municipality shall deem proper; shall be payable at the time or times and at the place or places as shall be determined by the legislative body; shall bear interest at such rate or rates as authorized by the legislative body; shall be signed on behalf of the municipality by the chair of the county legislative authority, mayor of the city or town, president of the port commission, and similar officer of any other municipality, shall be attested by the county auditor, the clerk or comptroller of the city or town, the secretary of the port commission, and similar officer of any other municipality, one of which signatures may be a facsimile signature, and shall have the seal of the municipality impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Revenue bonds shall be sold in the manner as the legislative body of the municipality shall deem best, either at public or private sale.

The municipality at the time of the issuance of revenue bonds may provide covenants as it may deem necessary to secure and guarantee the payment of the principal thereof and interest thereon, including but not being limited to covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing or guaranteeing the payment of the principal and interest, to establish and maintain rates, charges, fees, rentals, and sales prices sufficient to pay the principal and interest and to maintain an adequate coverage over annual debt service, to appoint a trustee for the bond owners and a trustee for

the safeguarding and disbursing of the proceeds of sale of the bonds and to fix the powers and duties of the trustee or trustees, and to make any and all other covenants as the legislative body may deem necessary to its best interest and that of its inhabitants to accomplish the most advantageous sale possible of the bonds. The legislative body may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with revenue bonds being issued and sold.

The legislative body of the municipality may include an amount for working capital and an amount necessary for interest during the period of construction of the airport or any facilities plus six months, in the principal amount of any revenue bond issue; if it deems it to the best interest of the municipality and its inhabitants, it may provide in any contract for the construction or acquisition of an airport or facilities that payment therefor shall be made only in revenue bonds at the par value thereof.

If the municipality or any of its officers shall fail to carry out any of its or their obligations, pledges or covenants made in the authorization, issuance and sale of bonds, the owner of any bond or the trustee may bring action against the municipality and/or said officers to compel the performance of any or all of the covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2010 c 8 § 5002; 1983 c 167 § 16; 1970 ex.s. c 56 § 3; 1969 ex.s. c 232 § 2; 1957 c 53 § 1.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

14.08.114 Issuance of funding or refunding bonds authorized. When any municipality has outstanding revenue bonds or warrants payable solely from revenues derived from the ownership, control, use and operation of the airport and all its facilities and structures thereon used and operated in connection therewith, the legislative body thereof may provide for the issuance of funding or refunding bonds to fund or refund outstanding warrants or bonds or any part thereof at or before maturity, and may combine various outstanding warrants and various series and issues of outstanding bonds in the amount thereof to be funded or refunded and may issue funding or refunding bonds to pay any redemption premium and interest payable on the outstanding revenue warrants or bonds being funded or refunded. The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on funding or refunding bonds, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon as provided in RCW 14.08.112, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

The net interest cost to maturity on funding or refunding bonds shall be at such rate or rates as shall be authorized by the legislative body.

The municipality may exchange funding or refunding bonds at par for the warrants or bonds which are being funded or refunded, or it may sell the funding or refunding bonds in the manner as it shall deem for the best interest of the municipality and its inhabitants, either at public or private sale. Funding or refunding bonds shall be governed by and issued under and in accordance with the provisions of RCW 14.08.112 with respect to revenue bonds unless there is a specific provision to the contrary in this section. [1983 c 167 § 17; 1970 ex.s. c 56 § 4; 1969 ex.s. c 232 § 3; 1957 c 53 § 2.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

14.08.116 Port district revenue bond financing powers not repealed or superseded. Nothing in RCW 14.08.112 and 14.08.114 shall repeal or supersede revenue bond financing powers otherwise granted to port districts under the provisions of chapter 53.40 RCW. [1957 c 53 § 3.]

14.08.118 Revenue warrants authorized. Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport, or other air navigation facility, may issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of RCW 14.08.112 as now or hereafter amended relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants.

Revenue warrants so issued shall not constitute a general indebtedness of the municipality. [1971 ex.s. c 176 § 1.]

14.08.120 Specific powers of municipalities operating airports. In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens

and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport for the purposes of financing, designing, constructing, operating, and maintaining consolidated rental car facilities and common use transportation equipment and facilities which are used to transport the customer between the consolidated car rental facilities and other airport facilities. The airport operator may require the rental car companies to collect the facility charges, and any facility charges so collected shall be deposited in a trust account for the benefit of the airport operator and remitted at the direction of the airport operator, but no more often than once per month. The charge shall be calculated on a per-day basis. Facility charges may not exceed the reasonable costs of financing, designing, constructing, operating, and maintaining the consolidated car rental facilities and common use transportation equipment and facilities and may not be used for any other purpose. For the purposes of this subsection (7), if an airport operator makes use of its own funds to finance the consolidated rental car facilities and common use transportation equipment and facilities, the airport operator (a) is entitled to earn a rate of return on such funds no greater than the interest rate that the airport operator would pay to finance such facilities in the appropriate capital market, provided that the airport operator establish the rate of return in consultation with the rental car companies, and (b) may use the funds earned under (a) of this subsection for purposes other than those associated with the consolidated rental car facilities and common use transportation equipment and facilities.

(8) To make airport property available for less than fair market rental value under very limited conditions provided that prior to the lease or contract authorizing such use the airport operator's board, commission, or council has (a) adopted a policy that establishes that such lease or other contract enhances the public acceptance of the airport and serves the airport's business interest and (b) adopted procedures for approval of such lease or other contract.

(9) If the airport operator has adopted the policy and procedures under subsection (8) of this section, to lease or license the use of property belonging to the municipality and acquired for airport purposes at less than fair market rental value as long as the municipality's council, board, or commission finds that the following conditions are met:

(a) The lease or license of the subject property enhances public acceptance of the airport in a community in the immediate area of the airport;

(b) The subject property is put to a desired public recreational or other community use by the community in the immediate area of the airport;

(c) The desired community use and the community goodwill that would be generated by such community use serves the business interest of the airport in ways that can be articulated and demonstrated;

(d) The desired community use does not adversely affect the capacity, security, safety, or operations of the airport;

(e) At the time the community use is contemplated, the subject property is not reasonably expected to be used by an

aeronautical tenant or otherwise be needed for airport operations in the foreseeable future;

(f) At the time the community use is contemplated, the subject property would not reasonably be expected to produce more than de minimis revenue;

(g) If the subject property can be reasonably expected to produce more than de minimis revenue, the community use is permitted only where the revenue to be earned from the community use would approximate the revenue that could be generated by an alternate use;

(h) Leases for community use must not preclude reuse of the subject property for airport purposes if, in the opinion of the airport owner, reuse of the subject property would provide greater benefits to the airport than continuation of the community use;

(i) The airport owner ensures that airport revenue does not support the capital or operating costs associated with the community use;

(j) The lease or other contract for community use is not to a for-profit organization or for the benefit of private individuals;

(k) The lease or other contract for community use is subject to the requirement that if the term of the lease is for a period that exceeds ten years, the lease must contain a provision allowing for a readjustment of the rent every five years after the initial ten-year term;

(l) The lease or other contract for community use is subject to the requirement that the term of the lease must not exceed fifty years; and

(m) The lease or other contract for community use is subject to the requirement that if the term of the lease exceeds one year, the lease or other contract obligations must be secured by rental insurance, bond, or other security satisfactory to the municipality's board, council, or commission in an amount equal to at least one year's rent, or as consistent with chapter 53.08 RCW. However, the municipality's board, council, or commission may waive the rent security requirement or lower the amount of the rent security requirement for good cause.

(10) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section. [2010 c 155 § 1; 2009 c 124 § 1; 2005 c 76 § 1; 1990 c 215 § 1; 1984 c 7 § 5; 1961 c 74 § 2; 1959 c 231 § 2; 1957 c 14 § 1. Prior: 1953 c 178 § 1; 1945 c 182 § 8; Rem. Supp. 1945 § 2722-37. Formerly RCW 14.08.120 through 14.08.150 and 14.08.320.]

Effective date—2009 c 124: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2009]." [2009 c 124 § 2.]

Appointment of police officers by port districts operating airports: RCW 53.08.280.

Additional notes found at www.leg.wa.gov

14.08.122 Adoption of regulations by airport operator for airport rental and use and collection of charges.

An airport operator may adopt all regulations necessary for rental and use of airport facilities and for the expeditious collection of airport charges. The regulations may also establish procedures for the enforcement of these regulations by the airport operator. The regulations shall include the following:

(1) Procedures authorizing airport personnel to take reasonable measures including, but not limited to, the use of chains, ropes, and locks to secure aircraft within the airport facility so that the aircraft are in the possession and control of the airport operator and cannot be removed from the airport. These procedures may be used if an owner hanging or parking an aircraft at the airport fails, after being notified that charges are owing and of the owner's right to contest that such charges are owing, to pay the airport charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of an aircraft where an owner's address cannot be determined or obtained after reasonable effort, the airport operator need not give such notice prior to securing the aircraft. At the time of securing the aircraft, an authorized airport employee shall attach to the aircraft a readily visible notice and shall make a reasonable attempt to send a copy of the notice to the owner at his or her last known address by registered mail, return receipt requested, and an additional copy of the notice by first-class mail. The notice shall be of a reasonable size and shall contain the following information:

- (a) The date and time the notice was attached;
- (b) A reasonable description of the aircraft;
- (c) The identity of the authorized employee;
- (d) The amount of airport charges owing;
- (e) A statement that if the account is not paid in full within ninety days from the time the notice was attached the aircraft may be sold at public auction to satisfy the airport charges;
- (f) A statement of the owner's right to commence legal proceedings to contest the charges owing and to have the aircraft released upon posting of an adequate cash bond or other security; and

(g) The address and telephone number where additional information may be obtained concerning the release of the aircraft.

(2) Procedures authorizing airport personnel at their discretion to move aircraft to an area within the airport operator's control or for storage with private persons under the airport operator's control as bailees of the airport facility. Costs of any such procedure shall be paid by the aircraft's owner.

(3) If an aircraft is secured under subsection (1) of this section or moved under conditions authorized by subsection (2) of this section the owner who is obligated for hanging or parking or other airport charges may regain possession of the aircraft by:

(a) Making arrangements satisfactory with the airport operator for the immediate removal of the aircraft from the airport's hangar, or making arrangements for authorized parking; and

(b) By making payment to the airport operator of all airport charges or by posting with the airport operator a sufficient cash bond or other security acceptable to such operator, to be held in trust by the airport operator pending written agreement of the parties with respect to payment by the aircraft owner of the amount owing, or pending resolution of charges in a civil action in a court of competent jurisdiction. Upon written agreement or judicial resolution, the trust shall terminate and the airport operator shall receive so much of the bond or other security as is necessary to satisfy the agreement, or any judgment, costs, and interest as may be awarded

to the airport operator. The balance shall be refunded immediately to the owner at the owner's last known address by registered mail, return receipt requested. The airport operator shall send to the owner by first-class mail a notice that the balance of funds was forwarded to him or her by registered mail, return receipt requested.

(4) If an aircraft parked or hangared at an airport is abandoned, the airport operator may authorize the public sale of the aircraft by authorized personnel to the highest and best bidder for cash as follows:

(a) If an aircraft has been secured by the airport operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, or in all other cases, for ninety days after the airport operator secures the aircraft, the aircraft shall be conclusively presumed to have been abandoned by the owner;

(b) Before the aircraft is sold, the owner of the aircraft shall be given at least twenty days' notice of sale by registered mail, return receipt requested, if the name and address of the owner are known, and the notice of sale shall be published at least once, more than ten but less than twenty days before the sale, in a newspaper of general circulation in the county in which the airport is located. The notice shall include the name of the aircraft, if any, its aircraft identification number, the last known owner and address, the time and place of sale, the amount of airport charges that will be owing at the time of sale, a reasonable description of the aircraft to be sold and a statement that the airport operator may bid all or part of its airport charges at the sale and may become a purchaser at the sale;

(c) Before the aircraft is sold, any person seeking to redeem an impounded aircraft under this section may commence a lawsuit in the superior court of the county in which the aircraft was impounded, to contest the validity of the impoundment or the amount of airport charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided under subsection (1) of this section, or the right to a hearing is waived and the owner is liable for any airport charges owing the airport operator. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs;

(d) The proceeds of a sale under this section shall first be applied to payment of airport charges owed. The balance, if any, shall be deposited with the department of revenue to be held in trust for the owner or owners and lienholders for a period of one year. If more than one owner appears on the aircraft title, and/or if any liens appear on the title, the department must, if a claim is made, interplead the balance into a court of competent jurisdiction for distribution. The department may release the balance to the legal owner provided that the claim is made within one year of sale and only one legal owner and no lienholders appear on the title. If no valid claim is made within one year of the date of sale, the excess funds from the sale shall be deposited in the aircraft search and rescue, safety, and education account created in *RCW 47.68.236. If the sale is for a sum less than the applicable airport charges, the airport operator is entitled to assert a claim against the aircraft owner or owners for the deficiency;

(e) In the event that no one purchases the aircraft at a sale, or that the aircraft is not removed from the premises or other arrangements are not made within ten days of the sale, title to the aircraft shall revert to the airport operator.

(5) The regulations authorized under this section shall be enforceable only if:

(a) The airport operator has had its tariff and/or regulations, including any and all regulations authorizing the impoundment of an aircraft that is the subject of delinquent airport charges, conspicuously posted at the airport manager's office at all times.[:;]

(b) All impounding remedies available to the airport operator are included in any written contract for airport charges between an airport operator and an aircraft owner; and

(c) All rules and regulations authorized under this section are adopted either pursuant to chapter 34.05 RCW, or by resolution of the appropriate legislative authority, as applicable. [1999 c 302 § 1; 1987 c 254 § 2.]

*Reviser's note: RCW 47.68.236 was repealed by 2005 c 341 § 5.

14.08.160 Federal aid. (1) A municipality is authorized to accept, receive, and receipt for federal moneys and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon airports and other air navigation facilities.

(2) The governing body of any municipality is authorized to designate the state secretary of transportation as its agent to accept, receive, and receipt for federal moneys on its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, and may enter into an agreement with the secretary of transportation prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and applicable laws of this state. Such moneys as are paid over by the United States government shall be paid over to the municipality under such terms and conditions as may be imposed by the United States government in making the grant.

(3) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the state secretary of transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where the acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal moneys, the municipality or the secretary of transportation, as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary. [1984 c 7 § 6; 1945 c 182 § 9; Rem. Supp. 1945 § 2722-38. Formerly RCW 14.08.160, 14.08.170, and 14.08.180.]

Additional notes found at www.leg.wa.gov

14.08.190 Establishment of airports on waters and reclaimed land. (1) The powers herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

(2) All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land. [1945 c 182 § 10; Rem. Supp. 1945 § 2722-39.]

14.08.200 Joint operations. (1) All powers, rights, and authority granted to any municipality in this chapter may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or outside the territorial limits of either or any of the municipalities and within or outside this state, or by this state or any municipality therein acting jointly with any other state or municipality therein, either within or outside this state if the laws of the other state permit such joint action.

(2) For the purposes of this section only, unless another intention clearly appears or the context requires otherwise, this state is included in the term "municipality," and all the powers conferred upon municipalities in this chapter, if not otherwise conferred by law, are conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the "governing body" of a municipality, that term means, as to the state, its secretary of transportation.

(3) Any two or more municipalities may enter into agreements with each other, duly authorized by ordinances or resolution, as may be appropriate, for joint action under this section. Concurrent action by the governing bodies of the municipalities involved constitutes joint action.

(4) Each such agreement shall specify its terms; the proportionate interest which each municipality shall have in the property, facilities, and privileges involved, and the proportion of preliminary costs, cost of acquisition, establishment, construction, enlargement, improvement, and equipment, and of expenses of maintenance, operation, and regulation to be borne by each, and make such other provisions as may be necessary to carry out the provisions of this section. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities, and privileges jointly owned if the property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this section or if the agreement is terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assump-

tion or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(5) Municipalities acting jointly as authorized in this section shall create a board from the inhabitants of the municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating, and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. The board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

(6) Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

(7) Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of the municipalities granted by this chapter, except as provided in this section. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by approval of the governing bodies of each of the municipalities involved. Upon the approval of the governing body, or if no approval is necessary then upon the board's own determination, such property may be acquired by private negotiation under such terms and conditions as seem just and proper to the board. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding December 1st, of a budget for the ensuing calendar year, which budget may be amended or supplemented by joint resolution of the municipalities involved during the calendar year for which the original budget was approved. Rules and regulations provided for by RCW 14.08.120(2) become effective only upon approval of each of the appointing governing bodies. No real property and no airport, other navigation facility, or air protection privilege, owned jointly, may be disposed of by the board by sale except by authority of all the appointing governing bodies, but the board may lease space, land area, or improvements and grant concessions on airports for aeronautical purposes, or other purposes which will not interfere with the aeronautical purposes of such airport, air navigation facility, or air protection privilege by private negotiation under such terms and conditions as seem just and proper to the board, subject to the provisions of RCW 14.08.120(4). Subject to the provisions of the agreement for the joint venture, and when it appears to the board to be in the best interests of the municipalities involved, the board may sell any personal property by private negotiations under such terms and conditions as seem just and proper to the board.

(8) Each municipality, acting jointly with another pursuant to the provisions of this section, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by RCW 14.08.120(2), and to fix by such ordinances penalties for the

violation thereof. When so adopted, the ordinances have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or outside the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in the same manner as are its individual ordinances. The consent of the state secretary of transportation to any such ordinance, where the state is a party to the joint venture, is equivalent to the enactment of the ordinance by a municipality. The publication provided for in RCW 14.08.120(2) shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

(9) Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The provisions of RCW 14.08.030(2) apply to such proceedings.

(10) For the purpose of providing funds for necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement. Such funds shall be provided for by bond issues, tax levies, and appropriations made by each municipality in the same manner as though it were acting separately under the authority of this chapter. The revenues obtained from the ownership, control, and operation of the airports and other air navigation facilities jointly controlled shall be paid into the fund, to be expended as provided in this chapter. Revenues in excess of cost of maintenance and operating expenses of the joint properties shall be divided or allowed to accumulate for future anticipated expenditures as may be provided in the original agreement, or amendments thereto, for the joint venture. The action of municipalities involved in heretofore permitting such revenues to so accumulate is declared to be legal and valid.

(11) The governing body may by joint directive designate some person having experience in financial or fiscal matters as treasurer of the joint operating agency. Such a treasurer shall possess all the powers, responsibilities, and duties that the county treasurer and auditor possess for a joint operating agency related to creating and maintaining funds, issuing warrants, and investing surplus funds. The governing body may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the governing body finds will protect the joint operating agency. The premium on such bond shall be paid by the joint operating agency. All disbursements from the joint fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe. If no such joint directive is made by the governing appointing bodies to designate a treasurer, then the provisions of RCW 43.09.285 apply to such joint fund.

(12) Specific performance of the provisions of any joint agreement entered into as provided for in this section may be enforced as against any party thereto by the other party or parties thereto. [1987 c 254 § 4; 1984 c 7 § 7; 1967 c 182 § 1; 1949 c 120 § 1; 1945 c 182 § 11; Rem. Supp. 1949 § 2722-40. Formerly RCW 14.08.200 through 14.08.280.]

Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.

Additional notes found at www.leg.wa.gov

14.08.290 County airport districts authorized. The establishment of county airport districts is hereby authorized. Written application for the formation of such a district signed by at least one hundred registered voters, who reside and own real estate in the proposed districts, shall be filed with the board of county commissioners. The board shall immediately transmit the application to the proper registrar of voters for the proposed district who shall check the names, residence, and registration of the signers with the records of his or her office and shall, as soon as possible, certify to said board the number of qualified signers. If the requisite number of signers is so certified, the board shall thereupon place the proposition: "Shall a county airport district be established in the following area: (describing the proposed district)?," upon the ballot for vote of the people of the proposed district at the next election, general or special. If a majority of the voters on such proposition shall vote in favor of the proposition, the board, shall, by resolution, declare the district established. If the requisite number of qualified persons have not signed the application, further signatures may be added and certified until the requisite number have signed and the above procedure shall be thereafter followed.

The area of such district may be the area of the county including incorporated cities and towns, or such portion or portions thereof as the board may determine to be the most feasible for establishing an airport. When established, an airport district shall be a municipality as defined in this chapter and entitled to all the powers conferred by this chapter and exercised by municipal corporations in this state. The airport district is hereby empowered to levy not more than seventy-five cents per thousand dollars of assessed value of the property lying within the said airport district: PROVIDED, HOWEVER, Such levy shall not be made unless first approved at any election called for the purpose of voting on such levy. [2010 c 8 § 5001; 1973 1st ex.s. c 195 § 1; 1949 c 194 § 1; 1945 c 182 § 12; Rem. Supp. 1949 § 2722-41.]

Additional notes found at www.leg.wa.gov

14.08.300 Governing body of district. The governing body of a county airport district shall be the board of county commissioners except as in this chapter provided. [1951 c 114 § 1; 1945 c 182 § 13; Rem. Supp. 1945 § 2722-42.]

14.08.302 Board of airport district commissioners—Petition—Order establishing. One hundred or more registered voters in any county airport district may make, sign and file a petition with the board of county commissioners asking that thereafter the airport district be governed by a board of airport district commissioners. Within ten days after receipt of such petition, the board of county commissioners shall check the petition. If the petition be found adequate and to be signed by the prescribed number of legal voters, the board of county commissioners shall within a reasonable time call a public hearing, notice of which shall be given by publication one week in advance thereof in a newspaper circulating within the district, at which arguments shall be heard for or against the proposal and if it shall appear to the county com-

missioners that the residents of the district so desire they shall enter an order declaring that the county airport district shall be governed by a board of three airport district commissioners. [1951 c 114 § 2.]

14.08.304 Board of airport district commissioners—Members—Election—Terms—Expenses. The board of airport district commissioners shall consist of three members. The first commissioners shall be appointed by the county legislative authority. At the next general district election, held as provided in *RCW 29.13.020, three airport district commissioners shall be elected. The terms of office of airport district commissioners shall be two years, or until their successors are elected and qualified and have assumed office in accordance with *RCW 29.04.170. Members of the board of airport district commissioners shall be elected at each regular district general election on a nonpartisan basis in accordance with the general election law. Vacancies on the board of airport district commissioners shall occur and shall be filled as provided in chapter 42.12 RCW. Members of the board of airport district commissioners shall receive no compensation for their services, but shall be reimbursed for actual necessary traveling and sustenance expenses incurred while engaged on official business. [1994 c 223 § 4; 1979 ex.s. c 126 § 3; 1951 c 114 § 3.]

**Reviser's note:* RCW 29.13.020 and 29.04.170 were recodified as RCW 29A.04.330 and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Nonpartisan primaries and elections: Chapter 29A.52 RCW.

14.08.310 Assistance to other municipalities. Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by this chapter, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of moneys, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf. [1945 c 182 § 14; Rem. Supp. 1945 § 2722-43.]

14.08.330 Jurisdiction of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement. Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this chapter, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it. The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations. However, by agreement with the

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municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries. [1985 c 246 § 1; 1945 c 182 § 15; Rem. Supp. 1945 § 2722-44.]

14.08.340 Interpretation and construction. This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics. [1945 c 182 § 17; Rem. Supp. 1945 § 2722-46.]

14.08.350 Severability—1945 c 182. If any provision of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1945 c 182 § 16.]

14.08.360 Short title. This act may be cited as the "Revised Airports Act." [1945 c 182 § 18.]

14.08.370 Repeal. All acts and parts of acts in conflict with this act are hereby repealed. [1945 c 182 § 19.]

**Chapter 14.12 RCW
AIRPORT ZONING**

Sections

14.12.010	Definitions.
14.12.020	Airport hazards contrary to public interest.
14.12.030	Power to adopt airport zoning regulations.
14.12.050	Relation to comprehensive zoning regulations.
14.12.070	Procedure for adoption of zoning regulations.
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14.12.110	Permits and variances.
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14.12.190	Appeals.
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14.12.220	Acquisition of air rights.
14.12.900	Severability—1945 c 174.
14.12.910	Short title.

Municipal airports, subject to county's comprehensive plan and zoning ordinances: RCW 35.22.415.

Planning commissions: Chapter 35.63 RCW.

14.12.010 Definitions. As used in this chapter, unless the context otherwise requires:

- (1) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.
- (2) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.
- (3) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and uti-

lized or to be utilized in the interest of the public for such purposes.

(4) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Political subdivision" means any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.

(6) "Structure" means any object constructed or installed by a human being, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [2009 c 549 § 1006; 1945 c 174 § 1; Rem. Supp. 1945 § 2722-15.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

14.12.020 Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (2) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (3) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein. [1945 c 174 § 2; Rem. Supp. 1945 § 2722-16.]

14.12.030 Power to adopt airport zoning regulations. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) of this sec-

tion in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chair elected by a majority of the members so appointed. [2010 c 8 § 5003; 1945 c 174 § 3; Rem. Supp. 1945 § 2722-17. Formerly RCW 14.12.030 and 14.12.040.]

14.12.050 Relation to comprehensive zoning regulations. (1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. [1945 c 174 § 4; Rem. Supp. 1945 § 2722-18. Formerly RCW 14.12.050 and 14.12.060.]

14.12.070 Procedure for adoption of zoning regulations. (1) Notice and hearing. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in RCW 14.12.030(2), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) Airport zoning commission. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission. [1945 c 174 § 5; Rem. Supp. 1945 § 2722-19. Formerly RCW 14.12.070 and 14.12.080.]

Public meetings: Chapter 42.30 RCW.

14.12.090 Airport zoning requirements. (1) Reasonableness. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining

what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Nonconforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in RCW 14.12.110(3). [1945 c 174 § 6; Rem. Supp. 1945 § 2722-20. Formerly RCW 14.12.090 and 14.12.100.]

14.12.110 Permits and variances. (1) Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his or her property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter: PROVIDED, That any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. [2010 c 8 § 5004; 1945 c 174 § 7; Rem. Supp. 1945 § 2722-21. Formerly RCW 14.12.110, 14.12.120, and 14.12.130.]

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14.12.140 Board of adjustment. (1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in RCW 14.12.190.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under RCW 14.12.110(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. The chair, or in his or her absence the acting chair, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record. [2010 c 8 § 5005; 1945 c 174 § 10; Rem. Supp. 1945 § 2722-24. Formerly RCW 14.12.140, 14.12.150, 14.12.160, and 14.12.170.]

14.12.180 Administration of airport zoning regulations. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under RCW 14.12.110(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. [1945 c 174 § 9; Rem. Supp. 1945 § 2722-23.]

14.12.190 Appeals. (1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency

made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision or [of] such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board or notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken. [1945 c 174 § 8; Rem. Supp. 1945 § 2722-22.]

14.12.200 Judicial review. (1) Any person aggrieved, or taxpayer affected, by any decision of the board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the superior court of the county in which the airport is located a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court may allow a writ of review directed to the board of adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a supersedeas.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

(6) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land. [1945 c 174 § 11; Rem. Supp. 1945 § 2722-25.]

14.12.210 Enforcement and remedies. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto. [1945 c 174 § 12; Rem. Supp. 1945 § 2722-26.]

14.12.220 Acquisition of air rights. In any case in which: (1) It is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, avigation casement [easement], or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter. [1945 c 174 § 13; Rem. Supp. 1945 § 2722-27.]

14.12.900 Severability—1945 c 174. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1945 c 174 § 14.]

14.12.910 Short title. This act shall be known and may be cited as the "Airport Zoning Act." [1945 c 174 § 15.]

Chapter 14.16 RCW

AIRCRAFT AND AIRMAN REGULATIONS

Sections

14.16.010	Definitions.
14.16.020	Federal licensing of aircraft required.
14.16.030	Federal licensing of airmen or airwomen.
14.16.040	Possession of license.
14.16.050	Traffic rules.
14.16.060	Penalty.
14.16.080	Downed aircraft rescue transmitter required—Exceptions.
14.16.090	Certain aircraft to carry survival kit—Contents—Misdemeanor to operate without—Exceptions.
14.16.900	Severability—1929 c 157.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

14.16.010 Definitions. In this chapter "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "airman" or "airwoman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. "Operating aircraft" means performing the services of aircraft pilot. "Person" means any individual, proprietorship, partnership, corporation, or trust. "Downed aircraft rescue transmitter" means a transmitter of a type approved by the state department of transportation or the federal aviation administration with sufficient transmission power and reliability that it will be automatically activated upon the crash of an aircraft so as to transmit a signal on a preset frequency so that it will be effective to assist in the location of the downed aircraft. "Air school" means air school as defined in RCW 47.68.020(11). [2010 c 8 § 5006; 1984 c 7 § 8; 1969 ex.s. c 205 § 1; 1929 c 157 § 1; RRS § 2722-1.]

Additional notes found at www.leg.wa.gov

14.16.020 Federal licensing of aircraft required. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate any aircraft within this state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force: PROVIDED, HOW-

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EVER, That for the first thirty days after entrance into this state this section shall not apply to aircraft owned by a non-resident of this state other than aircraft carrying persons or property for hire, if such aircraft is licensed and registered and displays identification marks in compliance with the laws of the state, territory or foreign country of which its owner is a resident. [1929 c 157 § 2; RRS § 2722-2.]

Aircraft certificates required: RCW 47.68.230.

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.030 Federal licensing of airmen or airwomen.

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person serving as an airman or airwoman within this state should have the qualifications necessary for obtaining and holding the class of license required by the United States government with respect to such an airman or airwoman subject to its jurisdiction, it shall be unlawful for any person to serve as an airman or airwoman within this state unless he or she has such a license: PROVIDED, HOWEVER, That for the first thirty days after entrance into this state this section shall not apply to nonresidents of this state operating aircraft within this state, other than aircraft carrying persons or property for hire, if such person shall have fully complied with the laws of the state, territory or foreign country of his or her residence respecting the licensing of airmen or airwomen. [2010 c 8 § 5007; 1929 c 157 § 3; RRS § 2722-3.]

Airman and airwoman certificates required: RCW 47.68.230.

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.040 Possession of license. The certificate of the license herein required shall be kept in the personal possession of the licensee when he or she is serving as an airman or airwoman within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he or she shall land. [2010 c 8 § 5008; 1929 c 157 § 4; RRS § 2722-4.]

14.16.050 Traffic rules. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that any person operating aircraft within this state should conform to the air traffic rules now or hereafter established by the secretary of commerce of the United States for the navigation of aircraft subject to the jurisdiction of the United States, it shall be unlawful for any person to navigate any aircraft within this state otherwise than in conformity with said air traffic rules. [1929 c 157 § 5; RRS § 2722-5.]

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.060 Penalty. Any person who violates any provision of this chapter shall be guilty of an offense punishable by a fine of not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment. [1929 c 157 § 6; RRS § 2722-6.]

14.16.080 Downed aircraft rescue transmitter required—Exceptions. Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or

leased without a pilot, shall be equipped with a fully functional downed aircraft rescue transmitter and it shall be unlawful for any person to operate such aircraft without such a transmitter: PROVIDED, HOWEVER, Nothing in this section shall apply to (1) instructional flights by an air school, with the exception of solo flights by students; (2) aircraft owned by and used exclusively in the service of the United States government; (3) aircraft registered under the laws of a foreign country; (4) aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (5) aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended. [1987 c 273 § 1; 1969 ex.s. c 205 § 2.]

14.16.090 Certain aircraft to carry survival kit—Contents—Misdemeanor to operate without—Exceptions. (1) Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or leased without a pilot shall be equipped with a survival kit consisting of those items prescribed by the department of transportation, which shall include, at least the following: (a) A tube tent or similar sheltering device; (b) a horn, whistle, or similar audible device capable of emitting a signal one-quarter of a mile; (c) a mirror; (d) matches; (e) a candle and/or another fire-starting device; and (f) survival instruction.

(2) It shall be unlawful for any person to operate such aircraft without such a survival kit: PROVIDED, HOWEVER, That nothing in this section shall apply to: (a) Instructional flights by an air school, with the exception of solo flights by students; (b) aircraft owned by and exclusively in the service of the United States government; (c) aircraft registered under the laws of a foreign country; (d) aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (e) aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the federal aviation act of 1958, Public Law 85-726, as amended. [1987 c 273 § 2.]

14.16.900 Severability—1929 c 157. If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application of such provision to other persons and circumstances shall not be affected thereby. [1929 c 157 § 7.]

Chapter 14.20 RCW AIRCRAFT DEALERS

Sections

14.20.010	Definitions.
14.20.020	Aircraft dealer licensure—Penalty.
14.20.030	Application for license—Contents.
14.20.040	Certificates.
14.20.050	License and certificate fees.
14.20.060	Payment of fees—Fund—Possession and display of licenses and certificates.
14.20.070	Surety bonds.

14.20.080	Branches and subagencies.
14.20.090	Denial, suspension, revocation of license—Grounds.
14.20.100	Appeal from secretary's order.

Aircraft excise tax: Chapter 82.48 RCW.

14.20.010 Definitions. When used in this chapter and RCW 47.68.250 and 82.48.100:

- (1) "Person" includes a firm, partnership, or corporation;
- (2) "Dealer" means a person engaged in the business of selling, exchanging, or acting as a broker of aircraft or who offers for sale two or more aircraft within a calendar year;
- (3) "Aircraft" means any weight-carrying device or structure for navigation of the air, designed to be supported by the air, but which is heavier than air and is mechanically driven;
- (4) "Secretary" means the secretary of the state department of transportation. [1993 c 208 § 1; 1984 c 7 § 9; 1955 c 150 § 1.]

Additional notes found at www.leg.wa.gov

14.20.020 Aircraft dealer licensure—Penalty. (1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2)(a) Except as provided in (b) of this subsection, a person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both.

(b) A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for up to three hundred sixty-four days, or both.

(3) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as contempt of court.

(4) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary. [2011 c 96 § 15; 2003 c 53 § 102; 1993 c 208 § 2; 1984 c 7 § 10; 1983 c 135 § 1; 1955 c 150 § 2.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

14.20.030 Application for license—Contents. Applications for an aircraft dealer's license shall contain:

- (1) The name under which the dealer's business is conducted and the address of the dealer's established place of business;
- (2) The residence address of each owner, director, or principal officer of the aircraft dealer, and, if a foreign corporation, the state of incorporation and names of its resident officers or managers;

(3) The make or makes of aircraft for which franchised, if any;

(4) Whether or not used aircraft are dealt in;

(5) A certificate that the applicant is a dealer having an established place of business at the address shown on the application, which place of business is open during regular business hours to inspection by the secretary or his or her representatives; and

(6) Whether or not the applicant has ever been denied an aircraft dealer's license or has had one which has been denied, suspended, or revoked. [2010 c 8 § 5009; 1984 c 7 § 11; 1955 c 150 § 3.]

Additional notes found at www.leg.wa.gov

14.20.040 Certificates. During such time as aircraft are held by a dealer for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of the dealer's business, an aircraft dealer's certificate may be used on the aircraft in lieu of a registration certificate or fee and in lieu of payment of excise tax. The secretary shall issue one aircraft dealer's certificate with each aircraft dealer's license. Additional aircraft dealer's certificates shall be issued to an aircraft dealer upon request and the payment of the fee provided in RCW 14.20.050. Nothing contained in this section, however, may be construed to prevent transferability among dealer aircraft of any aircraft dealer's certificate, and the certificate need be displayed on dealer aircraft only while in actual use or flight. Every aircraft dealer's certificate issued expires on December 31st, and may be renewed upon renewal of an aircraft dealer's license. [1984 c 7 § 12; 1955 c 150 § 4.]

Additional notes found at www.leg.wa.gov

14.20.050 License and certificate fees. The fee for original aircraft dealer's license for each calendar year or fraction thereof is seventy-five dollars, which includes one aircraft dealer's certificate and which must be renewed annually for a fee of seventy-five dollars. Additional aircraft dealer certificates may be obtained for ten dollars each per year. If any dealer fails or neglects to apply for renewal of his or her license prior to February 1st in each year, his or her license shall be declared canceled by the secretary, in which case any such dealer desiring a license shall reapply and pay a fee of seventy-five dollars. [2010 c 8 § 5010; 1998 c 187 § 1; 1984 c 7 § 13; 1955 c 150 § 5.]

Additional notes found at www.leg.wa.gov

14.20.060 Payment of fees—Fund—Possession and display of licenses and certificates. The fees set forth in RCW 14.20.050 shall be paid to the secretary. The fee for any calendar year may be paid on and after the first day of December of the preceding year. The secretary shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the aeronautics account of the transportation fund. The secretary may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates. [1998 c 187 § 2; 1984 c 7 § 14; 1955 c 150 § 6.]

Additional notes found at www.leg.wa.gov

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14.20.070 Surety bonds. Before issuing an aircraft dealer license, the secretary shall require the applicant to file with the secretary a surety bond in the amount of twenty-five thousand dollars running to the state, and executed by a surety company authorized to do business in the state. The bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his or her business in conformity with the provisions of this chapter, RCW 47.68.250, and 82.48.100. Any person who has suffered any loss or damage by reason of any act by a dealer which constitutes ground for refusal, suspension, or revocation of license under RCW 14.20.090 has a right of action against the aircraft dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [2010 c 8 § 5011; 1984 c 7 § 15; 1983 c 135 § 2; 1983 c 3 § 17; 1955 c 150 § 7.]

Surety insurance: Chapter 48.28 RCW.

Additional notes found at www.leg.wa.gov

14.20.080 Branches and subagencies. Every dealer maintaining a branch or subagency in another city or town in this state shall be required to have a separate aircraft dealer's license for such branch or subagency, in the same manner as though each constituted a separate and distinct dealer. [1955 c 150 § 8.]

14.20.090 Denial, suspension, revocation of license—Grounds. The secretary shall refuse to issue an aircraft dealer's license or shall suspend or revoke an aircraft dealer's license whenever he or she has reasonable grounds to believe that the dealer has:

(1) Forged or altered any federal certificate, permit, rating, or license relating to ownership and airworthiness of an aircraft;

(2) Sold or disposed of an aircraft which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(3) Wilfully misrepresented any material fact in the application for an aircraft dealer's license, aircraft dealer's certificate, or registration certificate;

(4) Wilfully withheld or caused to be withheld from a purchaser of an aircraft any document referred to in subsection (1) of this section if applicable, or an affidavit to the effect that there are no liens, mortgages, or encumbrances of any type on the aircraft other than noted thereon, if the document or affidavit has been requested by the purchaser;

(5) Suffered or permitted the cancellation of his or her bond or the exhaustion of the penalty thereof;

(6) Used an aircraft dealer's certificate for any purpose other than those permitted by this chapter or RCW 47.68.250 and 82.48.100;

(7) Been adjudged guilty of a crime that directly relates to the business of an aircraft dealer and the time elapsed since the conviction is less than ten years, or had a judgment entered against the dealer within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purpose of this section, the term "adjudged guilty" means, in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in

court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of the sentence is deferred or the penalty is suspended. [2010 c 8 § 5012; 1984 c 7 § 16; 1983 c 135 § 3; 1983 c 3 § 18; 1955 c 150 § 9.]

Additional notes found at www.leg.wa.gov

14.20.100 Appeal from secretary's order. If the secretary issues an order that any person is not entitled to an aircraft dealer's license or that an existing license should be suspended or revoked, he or she shall forthwith notify the applicant or dealer in writing. The applicant has thirty days from the date of the secretary's order to appeal therefrom to the superior court of Thurston county, which he or she may do by filing a notice of the appeal with the clerk of the superior court and at the same time filing a copy of the notice with the secretary. [2010 c 8 § 6001; 1984 c 7 § 17; 1955 c 150 § 10.]

Additional notes found at www.leg.wa.gov

Chapter 14.30 RCW
WESTERN REGIONAL SHORT-HAUL AIR
TRANSPORTATION COMPACT
(See chapter 81.96 RCW)

Title 15

AGRICULTURE AND MARKETING

Chapters

- 15.04** General provisions.
- 15.08** Horticultural pests and diseases.
- 15.09** Horticultural pest and disease board.
- 15.13** Horticultural plants, Christmas trees, and facilities—Inspection and licensing.
- 15.14** Planting stock.
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- 15.21** Washington fresh fruit sales limitation act.
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- 15.26** Tree fruit research act.
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- 15.58** Washington pesticide control act.
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- 15.66** Washington state agricultural commodity commissions.
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- 15.100** Forest products commission.
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- 15.115** Washington grain commission.

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Agricultural labor

- exempt from unemployment compensation: RCW 50.04.150.*
- exemptions for certain workers from minimum wage act: RCW 49.46.010.*
- processing and marketing associations: Chapter 24.34 RCW.*
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Animals

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belonging to another, killing, maiming, or disfiguring: RCW 9A.48.070 through 9A.48.090.

crimes relating to: Chapter 9.08 RCW.

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generally: Title 16 RCW.

larcenous appropriation of livestock: Chapter 9A.56 RCW, RCW 9A.56.100.

Bureau of statistics: Chapter 43.07 RCW.

Burning permits within fire protection district: RCW 52.12.101.

Commission merchants: Chapter 20.01 RCW.

Cooperative associations: Chapter 23.86 RCW.

Crimes

brands and marks: Chapter 9.16 RCW.

relating to animals: Chapter 9.08 RCW.

relating to fires: Chapter 9A.48 RCW.

Crops

liens: Chapter 60.11 RCW.

mortgages: Article 62A.9A RCW.

Dealers in hay or straw, certified vehicle weights required: RCW 20.01.125.

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Farm vehicles, gross weight fees: RCW 46.16A.425 and 46.17.330.

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Grain and other commodities, standard grades: Chapter 22.09 RCW.

Grain and terminal warehouses, commodity inspection: Chapter 22.09 RCW.

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Grazing ranges: RCW 79.10.125, chapter 79.13 RCW.

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Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.

Liability of agricultural landowners for injuries to recreation users—Limitation: RCW 4.24.210.

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agister and trainer: Chapter 60.56 RCW.

chattel, crop liens: Chapter 60.08 RCW.

crop: Chapter 60.11 RCW.

orchards and orchard lands: Chapter 60.16 RCW.

services of sires: Chapter 60.52 RCW.

warehouse operator's: Article 62A.7 RCW.

Mosquito control: Chapter 70.22 RCW.

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juvenile agricultural driving permits: RCW 46.20.070.

lamps on farm tractors, equipment, etc.: RCW 46.37.160.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Orchards and orchard lands, liens: Chapter 60.16 RCW.

Pest control compact: Chapter 17.34 RCW.

Pesticide application: Chapter 17.21 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Services of sires, lien: Chapter 60.52 RCW.

Soil conservation: Chapter 89.08 RCW.

State international trade fairs: RCW 43.31.800 through 43.31.850.

Swine, garbage feeding: Chapter 16.36 RCW.

Vocational agriculture education—Service areas—Programs in local school districts: RCW 28A.300.090.

Washington clean air act: Chapter 70.94 RCW.

Weeds

destruction by cities: RCW 35.21.310.

generally: Title 17 RCW.

Weights and measures

generally: Chapter 19.94 RCW.

standards, packages, boxes, etc.: Chapter 19.94 RCW.

Chapter 15.04 RCW

GENERAL PROVISIONS

Sections

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15.04.090	Lease of unnecessary lands to nonprofit groups—Funds.
15.04.110	Control of predatory birds.
15.04.120	Control of predatory birds—Expenditures and contracts.
15.04.150	Berry harvesting by youthful workers—Legislative finding.
15.04.160	Berry harvesting by youthful workers—Authorized—Restrictions.
15.04.200	Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements.
15.04.300	Guide to state and federal programs of assistance to farm families.
15.04.400	Findings—Department's duty to promote agriculture, protect public health and welfare.
15.04.402	Department to advance private sector, economic well-being of agricultural industry.
15.04.410	Declarations of "Washington state grown"—Restrictions—Violations unlawful—Application of consumer protection act.
15.04.415	Information on product country of origin—Findings—Use of placards.

Bacon, packaging at retail to reveal quality and leanness, director's duties: RCW 69.04.205 through 69.04.207.

15.04.010 Definitions. As used in this title except where otherwise defined:

"Department" means the department of agriculture.

"Director" means the director of agriculture.

"Person" includes any individual, firm, corporation, trust, association, cooperative, copartnership, society, any other organization of individuals, and any other business unit, device, or arrangement. [1961 c 11 § 15.04.010. Prior: (i) 1941 c 56 § 3; Rem. Supp. 1941 § 2828-4. (ii) 1941 c 56 § 4; Rem. Supp. 1941 § 2828-5. (iii) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part.]

15.04.090 Lease of unnecessary lands to nonprofit groups—Funds. The director of agriculture may, at his or her discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his or her direction and control, the retention of which he or her [she] deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural, or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the

provisions of this section shall be deposited in the fair fund created under RCW 15.76.115. [2010 c 8 § 6002; 1998 c 345 § 1; 1961 c 11 § 15.04.090. Prior: 1953 c 119 § 1.]

*Reviser's note: Section 16 of this act was vetoed by the governor.

Additional notes found at www.leg.wa.gov

15.04.110 Control of predatory birds. The director of the state department of agriculture may control birds which he or she determines to be injurious to agriculture, and for this purpose enter into written agreements with the federal and state governments, political subdivisions and agencies of such governments, political subdivisions and agencies of this state including counties, municipal corporations and associations and individuals, when such cooperation will implement the control of predatory birds injurious to agriculture. [2010 c 8 § 6003; 1961 c 247 § 1.]

15.04.120 Control of predatory birds—Expenditures and contracts. For the purpose of carrying out the provisions of RCW 15.04.110 the director may make expenditures and contract for personal services, control materials and equipment as required to carry out such predatory bird control functions. [1961 c 247 § 2.]

15.04.150 Berry harvesting by youthful workers—Legislative finding. The legislature finds that the crops of berry growers in the state are imperiled by a recent change in the federal law relating to youthful agricultural workers. Since the berry harvest season is so short that few migrant agricultural workers find the trip to this state to pick berries worth the trouble, the long-established use of younger pickers must be permitted to the extent where such employment will not interfere with interstate commerce and the federal law. Further, the legislature finds that such employment is healthful, a good indoctrination for youth in the work ethic and the role of agriculture in society, and an opportunity youths welcome to earn extra spending money. [1975 1st ex.s. c 238 § 1.]

15.04.160 Berry harvesting by youthful workers—Authorized—Restrictions. (1) An employee engaged to pick berries in this state outside of school hours for the school district where such employee is living while so employed may be less than twelve years of age: PROVIDED, That (a) the employee is employed with the consent of his or her parent or person standing in the place of his or her parent, (b) the berries are for sale within the state only, and are not to be shipped out of the state in any form; (c) the secretary of agriculture or his or her designated representative has certified that there are not sufficient workers available in the immediate area to harvest the crop without such youthful employees, and (d) all employees of any employer engaging youthful employees are paid at the same rate for picking berries.

(2) Each basket, package, or other container containing berries or berry products picked by an employee under twelve years of age shall be distinctively marked so as to insure that the berries do not enter interstate commerce: PROVIDED HOWEVER, That nothing in RCW 15.04.150 and 15.04.160 shall apply to employers who are exempt from the federal fair labor standards act. [2010 c 8 § 6004; 1975 1st ex.s. c 238 § 2.]

15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements. (1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, 15.89, 15.115, and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures. Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW. [2009 c 33 § 33; 2006 c 330 § 24; 1987 c 452 § 16; 1986 c 203 § 24; 1985 c 26 § 1.]

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Additional notes found at www.leg.wa.gov

15.04.300 Guide to state and federal programs of assistance to farm families. The department of agriculture is authorized to develop, in cooperation with Washington State University and other state agencies, an informational guide to programs offered by state and federal agencies which would be of assistance to farm families. The informational guide shall be made available to farmers and ranchers through county extension offices, farm organizations, and other appropriate means. [1987 c 393 § 26.]

15.04.400 Findings—Department's duty to promote agriculture, protect public health and welfare. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture, which is vital to the economic well-being of the state. The legislature finds that farmers and ranchers are responsible stewards of the land, but are increasingly subjected to complaints and unwarranted restrictions that encourage, and even force, the premature removal of lands from agricultural uses.

The legislature further finds that it is now in the overriding public interest that support for agriculture be clearly expressed and that adequate protection be given to agricultural lands, uses, activities, and operations.

The legislature further finds that the department of agriculture has a duty to promote and protect agriculture and its dependent rural community in Washington state however, the duty shall not be construed as to diminish the responsibility of the department to fully carry out its assigned regulatory

responsibilities to protect the public health and welfare. [1994 c 46 § 9; 1991 c 280 § 1.]

Additional notes found at www.leg.wa.gov

15.04.402 Department to advance private sector, economic well-being of agricultural industry. The department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek, consistent with its regulatory responsibilities, to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington state. [1994 c 46 § 10; 1991 c 280 § 2.]

Additional notes found at www.leg.wa.gov

15.04.410 Declarations of "Washington state grown"—Restrictions—Violations unlawful—Application of consumer protection act. (1) Before being offered for retail sale in this state, any agricultural commodity, defined under RCW 15.66.010, that was grown or raised in this state may be advertised, labeled, described, sold, marked, or otherwise held out, with the words "Washington state grown," or other similar language indicating that the product is from Washington state grown or raised agricultural commodities.

(2) An agricultural commodity that was not grown or raised in this state and packages of that product shall not be advertised, labeled, described, sold, marked, or otherwise held out as "Washington state grown," or in any way as to imply that such product is a Washington state grown or raised agricultural commodity.

(3) It is unlawful for any person to violate this section.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 c 97 § 1.]

15.04.415 Information on product country of origin—Findings—Use of placards. (1) The legislature finds that it is a common practice for consumers to be provided information as to the country [of] origin for many products available to them for purchase. The legislature finds that consumers have a right to know the origin of the fresh fruits and vegetables being offered to them at retail sale. The legislature finds that there is value to the consumer being able to make an informed buying decision as to whether the fresh fruit or vegetable was produced under standards and conditions required in the United States. Further, the legislature finds that consumers should be given the ability to make an informed choice to buy fresh fruits and vegetables that are grown in Washington state as a means of supporting the economy of the state.

(2) Stores or other businesses offering fresh fruit and vegetables for retail sale to consumers shall place a placard on the bin, shelf, or other location the product is displayed that informs the consumer where the fruit or vegetable was grown if it was grown in the United States or grown in Wash-

ington. The placard shall indicate that the product was either "Grown in United States" or "Grown in Washington." Placards are not required if (a) the product was grown outside of the United States, or (b) each item in the bin, shelf, or other location contains a sticker or label that indicates where the fruit or vegetable product was grown. [2002 c 40 § 1.]

Chapter 15.08 RCW

HORTICULTURAL PESTS AND DISEASES

Sections

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15.08.010 Definitions. As used in this chapter:

(1) "Supervisor" means an assistant director known as the supervisor of plant industry.

(2) "Horticultural premises" includes orchards, vineyards, nurseries, berry farms, vegetable farms, cultivated cranberry marshes, packing houses, dryhouses, warehouses, depots, docks, cars, vessels and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored, packed, shipped, held for shipment or delivery, sold or otherwise disposed of.

(3) "Nursery stock" includes, but is not limited to, any horticultural, floricultural, viticultural, and vegetable plant, for planting, propagation or ornamentation, growing or otherwise, including cut plant material.

(4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in or to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Nuisance" means any plant, produce or property found in any commercial area upon which is found any pest

or disease that is or may be a source of infestation of other properties.

(6) "Commercial area" means a district where any horticultural product is being produced to the extent that a producer is dependent thereon, in whole or in part, for his or her livelihood.

(7) "Infect," and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(8) "Disinfect," and its derivatives, means the control, cure, or eradication of such pests or diseases by cutting or destroying infected parts or the application of effective pesticides. [2010 c 8 § 6005; 1981 c 296 § 4; 1961 c 11 § 15.08.010. Prior: (i) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part. (ii) 1941 c 20 § 2; Rem. Supp. 1941 § 2849-1b. (iii) 1941 c 20 § 3; Rem. Supp. 1941 § 2849-1c. (iv) 1941 c 20 § 4; Rem. Supp. 1941 § 2849-1d. (v) 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

Additional notes found at www.leg.wa.gov

15.08.020 Methods of prevention, control and disinfection. The following methods shall be used for the prevention, control or disinfection of pests and diseases:

(1) Bacterial diseases, removal and destruction of infected plant or part thereof, care being used to disinfect removal tools to prevent infection therefrom;

(2) Fungus diseases, spraying with effective fungicide;

(3) Chewing or sucking insect pests, spraying with effective insecticide;

(4) Fungus insect pests, spraying with other effective solutions or emulsions described in circulars issued by the director. [1961 c 11 § 15.08.020. Prior: 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

15.08.025 Disinfection of fruit trees—Procedures to be followed. The method for disinfecting fruit trees required to be disinfected under the provisions of this chapter shall be as prescribed in the official published recommendations of the Washington State University for the proper prevention, control and eradication of pests and diseases of fruit trees.

Whenever specific recommendations for disinfecting fruit trees are not set forth in the official published recommendations of the Washington State University, the generally accepted horticultural practices for the prevention, control and eradication of any pests and diseases in the producing area shall be used.

The burden of proving that the proper procedures as set forth in this section have been followed shall be upon the person ordered to disinfect fruit trees.

The disinfection of fruit trees as in this section set forth shall in no way limit the authority of the inspection board to determine that such fruit trees constitute a nuisance and thus shall be subject to removal as provided for in this chapter. [1981 c 296 § 5; 1965 c 27 § 2.]

Purpose—1965 c 27: "The production of tree fruits in the state of Washington is a major agricultural industry promoting the general economic welfare of the state and beneficial to the health of the public. The proper maintenance of fruit tree orchards to insure the continued and increased benefits to the health and welfare of the state makes it necessary to prevent, eradicate and control any pests or diseases which are or may be injurious to such

fruit trees and the produce therefrom. Such prevention, eradication and control of pests and diseases which are or may be injurious to fruit trees and their crops may require chemical or biological control or removal of host trees which may be hosts and breeding places for such diseases and pests. The provisions of this act are adopted under the police power of the state for the purpose of protecting its health and general welfare, presently and in the future." [1965 c 27 § 1.]

Additional notes found at www.leg.wa.gov

15.08.030 Duty to disinfect, destroy—Disposal of cuttings. It is the duty of every owner, shipper, consignee, or other person in charge of fruits, vegetables, or nursery stock, and the owner, lessee, or occupant of horticultural premises, to use sufficient methods of prevention to keep said properties free from infection by pests or disease. In event any of said properties become infected it is the duty of said persons to use effective methods to control or destroy the infection by disinfection as in this chapter defined. All fruits, vegetables and nursery stock which cannot be successfully disinfected shall be promptly destroyed.

In counties where black stem rust infection occurs every owner or person in charge of premises on which barberry bushes of the rust-producing varieties are growing shall forthwith destroy such bushes.

Within forty-eight hours after removal of any cuttings or prunings from bacterially infected trees or plants infected with fruit tree leaf roller egg clusters the person removing same shall disinfect or destroy them by burning or scorching. [1961 c 11 § 15.08.030. Prior: (i) 1927 c 311 § 3; 1923 c 37 § 2; 1915 c 166 § 4; RRS § 2842. (ii) 1921 c 141 § 8; 1915 c 166 § 18; RRS § 2856.]

15.08.040 Authority to enter premises—Interference unlawful. The director, supervisor, and horticultural inspectors are authorized to at any time enter horticultural premises and any structure where fruit, vegetables, nursery stock, or horticultural products are grown or situated for any purpose, to inspect the same for infection.

No person shall hinder or interfere with any such officer in entering or inspecting or performing any duty imposed upon him or her. [2010 c 8 § 6006; 1961 c 11 § 15.08.040. Prior: 1915 c 166 § 9; RRS § 2847.]

15.08.050 Condemnation of infected property—Disposal of, unlawful. If the premises or property inspected is found to be infected the inspecting officer shall condemn the same and serve upon the owner or person in charge thereof a written notice of the condemnation, describing the premises or property with reasonable certainty, and ordering the infected portion to be disinfected, or to be destroyed if incapable of disinfection, within a time and in a manner stated therein, and giving notice that if the order is not complied with in the time stated, the officer will disinfect or destroy the property and charge the expense thereof to the owner or against the premises.

No person shall ship, sell, or otherwise dispose of or part with possession of, or transport, any such condemned property until all requirements of said notice and order are complied with and written permit of the inspector so to do is issued. [1961 c 11 § 15.08.050. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 §

2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.060 Condemnation of infected property—Notice to owner—Division into classes. Said notice of condemnation shall also grant permission to the owner or person in charge of infected fruit, vegetables, or nursery stock to divide the same into classes:

- (1) The portion not infected;
- (2) The infected portion which is capable of successful disinfection; and
- (3) The infected portion which is incapable of successful disinfection and must be destroyed.

Said notice shall require the owner or person to disinfect class (2) and destroy class (3) within the time stated. [1961 c 11 § 15.08.060. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.070 Condemnation of infected property—Use of condemned fruit, vegetables—Permit. In the case of fruit or vegetables which cannot be successfully disinfected the inspector may grant to the owner or person in charge thereof a written permit to use the condemned products for stock feed, or manufacture the same into by-products, or ship them to a by-product factory; and it is unlawful for the person receiving such permit to sell or dispose of such products without first having the same manufactured into a by-product or shipped to a by-product factory, or to divert any such shipment when made, or for the consignee of such shipment to sell or dispose of the same until it is manufactured into a by-product. [1961 c 11 § 15.08.070. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.080 Condemnation of infected property—Service of notice—Personal, constructive, substituted. Personal service of said notice shall be made upon the person in possession or in charge of said premises or property if possible. If such person is not the owner, or personal service cannot be made on such person, then a copy of the notice shall be mailed or telegraphed to the owner at his or her home or post office address if known or can with reasonable diligence be ascertained. If personal service cannot be made upon any person in possession or charge of the premises or property and the name and address of the owner thereof are not known or cannot be so ascertained, then the notice shall be served by posting the same in some conspicuous place on the premises where the property to be disinfected or destroyed is situated, which service by posting shall be construed to be constructive personal service upon such owner. If the name and address of the owner are not known or cannot be so ascertained, service upon the person in possession or charge of the premises or property shall constitute substituted personal service upon the owner, in the absence of fraud or gross neglect. [2010 c 8 § 6007; 1961 c 11 § 15.08.080. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.090 Condemnation of infected property—Duty to comply—Inspector's duty on failure—Lien for costs. Except as hereinabove provided, upon service of said notice the owner or person in possession or charge of the premises or property shall comply with its terms within the time specified. In case of their failure so to do, the inspector may enter the premises and perform or cause to be performed the services required in the notice. He or she shall keep an accurate account of the expense of performing said services, which shall become a lien on the premises or property which may be foreclosed in the manner herein provided. The lien on personal property shall have preference over all other liens.

If the inspector has not disinfected or destroyed the property it may be declared a nuisance as herein provided and treated as such. [2010 c 8 § 6008; 1961 c 11 § 15.08.090. Prior: (i) 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part. (ii) 1943 c 150 § 5; 1935 c 168 § 4; 1931 c 27 § 2; 1927 c 311 § 4; 1915 c 166 § 11; Rem. Supp. 1943 § 2849.]

15.08.100 Foreclosure of lien—Sale—Notice of impounding—Contents. The officer disinfecting personal property may enforce the lien thereon provided for in RCW 15.08.090 by impounding and selling the property. He or she shall give notice of the impounding and proposed sale by posting a written notice in a conspicuous place upon the premises where the property is impounded and serve said notice upon the owner or person in charge of the property in the manner provided for service of notice to disinfect in RCW 15.08.080. Said notice shall state that the property, describing it with reasonable certainty, has been impounded, where it is situated, the amount of costs and expenses charged against it, and that unless same are paid within a specified time the property will be sold to satisfy said charges, accrued transportation and storage charges, if any, and costs of sale. Said specified time shall not be less than ten days after giving of the notice, except that immediate sale may be made of perishable fruits or vegetables. [2010 c 8 § 6009; 1961 c 11 § 15.08.100. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.110 Sale proceeds—Deficiency—Action to recover. Such sales may be either at public auction or private sale, whichever, in the sound discretion of the officer, will be to the best interests of the state and owner of the property. The proceeds thereof shall be applied to payment of: First, costs of sale; second, expenses of disinfection; third, accrued transportation and storage charges. The balance, if any, shall be paid to the owner.

Should such proceeds be insufficient to pay the costs of sale and expenses of disinfection, the deficiency may be recovered from the owner or person in charge in an action brought in the name of the state on the relation of the director by the prosecuting attorney of the county when directed to do so by the attorney general. [1961 c 11 § 15.08.110. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.120 Record of proceedings—Verified copy as evidence. The inspector shall make and sign a record of the proceedings, stating the name of the owner or reputed owner of the property, if known; location of the property, date of

inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; the cost thereof in detail; date and manner of giving notice of impounding and sale; date, place, and manner of sale; name of the purchaser; and amount of the proceeds and disposition thereof.

Upon demand of the owner or person in charge of the property, the inspector shall furnish him or her with a verified copy of the record, and tender him or her the balance of the proceeds. If no demand is made within thirty days of the sale, or if the tender is refused, the inspector shall file a verified copy of the record with and remit any balance of the proceeds to the director, and if it is not claimed by the owner within six months, it shall be deposited in the state treasury.

The record or a verified copy thereof shall be admissible in evidence as prima facie evidence of the truth of its contents. [2010 c 8 § 6010; 1961 c 11 § 15.08.120. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.130 Record of premises disinfected—Costs—Lien. The inspector disinfecting any horticultural premises shall make and sign a detailed record of the proceedings, stating the legal description of the premises; give the name of the owner or reputed owner; the date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; and the cost thereof in detail. If the cost is not paid within five days from the completion of the disinfecting, the inspector shall file with the auditor of the county in which the premises are situated two verified copies of the above record, and a claim of lien against the premises for the amount of the costs and therein refer to the record, which the auditor shall record as other lien claims. The auditor shall charge the same fees as are charged for filing and recording other liens. [1961 c 11 § 15.08.130. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.140 Hearing on costs—Notice—Service. The county auditor shall forthwith issue warrants in payment of the labor employed in the work, and thereupon the county shall be subrogated to all rights of the laborers so paid. He or she shall fix the day for hearing on the record before the county commissioners, which shall be not less than twenty days from the date of filing. He or she shall prepare a notice directed to the owner or reputed owner of the premises of the filing of the record and claim and the hearing thereon, the time and place of the hearing and the amount of the claim. The sheriff shall serve the notice in the manner provided for service of the notice to disinfect, and file with the auditor before the hearing, his or her return of service and the amount of his or her fees, which shall be the same as for service of summons in civil proceedings. [2010 c 8 § 6011; 1961 c 11 § 15.08.140. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.150 Payment and release—Order on amount—Priority of lien. If before or at the hearing the amount of the claim and the auditor's and sheriff's fees are paid to the county treasurer, he or she shall deliver to the auditor a duplicate receipt of the payment and the auditor shall cancel the lien and notify the county commissioners thereof. The trea-

surer shall pay the funds to the persons entitled thereto as appears from the records in the auditor's office.

If payment is not made, the auditor shall present to the board of county commissioners a verified copy of the record and claim, which shall be accepted in any proceeding as prima facie evidence of the truth of the contents thereof. The board shall receive and consider the record and claim and all sworn testimony offered, and shall enter an order fixing the amount of the claim and costs, and direct the amount paid from the current expense fund, and the auditor shall draw warrants therefor. The auditor shall record the order in his or her office as other lien claims and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order. [2010 c 8 § 6012; 1961 c 11 § 15.08.150. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.160 Payment date—Cancellation of lien. The lien and interest may be paid on or before the first Monday in October following the entry of the order, upon presenting to the treasurer, a statement from the auditor showing the amount due. Upon payment the treasurer shall stamp the statement and file it in his or her records, and shall issue a receipt to the person making the payment, showing payment and shall deliver a duplicate to the auditor, who shall then cancel the lien. [2010 c 8 § 6013; 1961 c 11 § 15.08.160. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.170 Failure to pay—Conversion into taxes—Use. If the lien and interest are not paid on or before such first Monday in October the commissioners, when levying taxes for the ensuing year, shall also levy on the premises covered by the lien, a tax for the amount of the lien and interest, together with a penalty of six percent, which tax shall be collected as other taxes for current expenses. The auditor shall then cancel the lien and note thereon that the amount thereof has been charged against the premises as taxes.

The tax shall be credited to the current expense fund and used to defray the expense of horticultural inspection and disinfection in the county, whether or not such expenditure has been included in the estimates made in the current county budget. [1961 c 11 § 15.08.170. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.180 Inspection board—Creation—Duties—Powers. If a horticultural inspector finds premises or property infested, he or she shall make a written report thereof to the inspector-at-large in his or her district stating the disease or infestation found, the estimated extent thereof, and whether in his or her opinion it is or will become a nuisance. Upon receipt of the report the inspector-at-large shall appoint a person residing within three miles of the said premises or property and who is a grower of horticultural products which could be infected from said premises or property, and who, with the inspector-at-large or someone delegated by him or her from his or her department, shall appoint a third person likewise a grower of agricultural products which could be so infected. Said three persons shall constitute an inspection board whose duty shall be to forthwith examine the infested premises or property so as to determine whether same or any

part thereof is infested with any pest or disease named in RCW 15.08.010.

The board members shall have the same power of entry and inspection as the director, supervisor, or horticultural inspector and shall be compensated at the rate of four dollars per day to be paid from the county current expense budget for horticulture. [2010 c 8 § 6014; 1961 c 11 § 15.08.180. Prior: (i) 1941 c 20 § 5; 1915 c 166 § 6; Rem. Supp. 1941 § 2849-1e. (ii) 1941 c 20 § 7, part; Rem. Supp. 1941 § 2849-1g, part.]

15.08.190 Report of inspection—Nuisance abatement. Said board shall make a written report to the inspector-at-large of its findings, signed under oath by a majority of its members and stating:

- (1) Whether said premises or a part thereof are infested,
- (2) If infested, the nature and extent of infestation, and
- (3) Whether the infestation constitutes a nuisance.

If the report shows the premises infested and constituting a nuisance, it and the findings of the inspector, shall be transmitted forthwith to the prosecuting attorney of the county. Within five days the prosecuting attorney shall file in the superior court a petition, signed and verified by him or her, describing the premises or property, giving the names of the owners, encumbrancers and other persons interested therein, as ascertained from the county records, containing a recital of the proceedings taken under RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180, and praying for an order declaring the premises or property to be a nuisance. Said report of the inspection board shall be attached to the petition as an exhibit and made a part thereof. [2010 c 8 § 6015; 1961 c 11 § 15.08.190. Prior: 1941 c 20 §§ 6, 7, part, 8; Rem. Supp. §§ 2849-1f, 2849-1g, part, 2849-1h.]

15.08.200 Notice of hearing—Service—Adjournments. A notice containing a description of the premises, stating the objects and purposes of the petition and the time and place of presentation of the petition to the court, shall be served upon every person named as interested in the premises at least five days prior to the time of presentation. Service of the notice shall be as nearly as possible in the manner provided by law for service of summons in a civil action, except that if service is had by publication the period of publication shall be two weekly publications in a newspaper published or of general circulation in the county, and the service shall be deemed completed on the expiration of fifteen days after the date of the first publication.

Proof of service may be made by affidavit of the person serving or publishing the notice and shall be filed with the clerk of the court on or before the time of presentation of the petition.

On application of any party or its own motion the court may adjourn the hearing from time to time, and may order new or further notice to be given any person whose interest may be affected. [1961 c 11 § 15.08.200. Prior: (i) 1941 c 20 § 9; 1937 c 71 § 2; Rem. Supp. §2849-2. (ii) 1937 c 71 § 3; RRS § 2849-3.]

15.08.210 Order of abatement. At the hearing there must be competent proof that all parties interested in the premises or property have been duly served with said notice, and

that the procedure prescribed in RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180 has been duly followed. The report of the inspection board shall be prima facie evidence that the premises are infested and constitute a nuisance. If there is no showing that said board acted in a capricious, arbitrary or unfair manner, the court shall accept the recommendation of said board and forthwith decree the plants, produce or property on the premises to constitute a nuisance and order the inspector-at-large of the district and the county commissioners to destroy the same, or abate the nuisance in such other manner as the court may direct.

The costs of destruction or abatement, and of the proceedings shall be taxed against the defendants therein. [1961 c 11 § 15.08.210. Prior: (i) 1941 c 20 § 10; Rem. Supp. 1941 § 2849-2a. (ii) 1937 c 71 § 4; RRS § 2849-4.]

15.08.220 Appeals—Bond for damages. An appeal may be taken from the decree by filing notice thereof not later than ten days after issuance of the decree. The appellant shall be required to file an appeal bond of not less than one thousand dollars and sufficient in amount to cover possible damages to neighboring properties due to delay in carrying out the decree. [1961 c 11 § 15.08.220. Prior: 1941 c 20 §§ 11, 12; Rem. Supp. 1941 §§ 2849-2b, 2849-2c.]

15.08.230 Disinfection of public properties. The director may require the governing body of counties, cities, towns and irrigation and school districts or other political subdivisions of the state to disinfect or destroy all infected trees, shrubs, or other nursery stock growing upon public property within their respective jurisdictions, or the director may disinfect or destroy such infected trees, shrubs, or other nursery stock. [1981 c 296 § 6; 1961 c 11 § 15.08.230. Prior: 1915 c 166 § 19; RRS § 2857.]

Additional notes found at www.leg.wa.gov

15.08.240 Dumping infected products, containers, prohibited. It shall be unlawful for a property owner or lessee to permit the piling or dumping, or for a person to pile or dump, any infected product on any property or to pile or dump infected containers where the dumping of the infected products or containers might constitute a source of infestation to horticultural products. [1961 c 11 § 15.08.240. Prior: 1943 c 150 § 6; 1941 c 20 § 14; Rem. Supp. 1943 § 2849-2e.]

15.08.250 Host-free districts—Director's duties. Whenever the director determines that a particular pest cannot be eradicated or effectively controlled by ordinary means, or that it is impractical to eradicate or control it without the destruction in whole or in part of uninfected host plants, he or she may issue a proclamation setting out the host-free period or host-free district, or both, describing the host plant and the district wherein planting, growing, cultivating, or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists. [2010 c 8 § 6016; 1961 c 11 § 15.08.250. Prior: 1941 c 20 § 13; Rem. Supp. 1941 § 2849-2d.]

15.08.260 Horticultural tax. At the time of making the regular annual tax levy the board of county commissioners of each county shall include a tax, to be known as the "horticultural tax," upon the taxable property of the county in an amount sufficient to meet the expense of inspecting and disinfecting nursery stock, fruits, vegetables, horticultural or agricultural products, and horticultural premises under the provisions of this title. Said tax shall be levied and collected in the same manner as are general taxes and when collected shall be placed in the county current expense fund. [1961 c 11 § 15.08.260. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

15.08.270 Basis for estimating the tax. In estimating the amount to be levied for said horticultural tax the board shall take into consideration the expense of such inspection and disinfection for the ensuing year, and the amount which will be collected under the provisions of this chapter on properties disinfected. [1961 c 11 § 15.08.270. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

Chapter 15.09 RCW

HORTICULTURAL PEST AND DISEASE BOARD

Sections

15.09.010	Purpose.
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15.09.030	Members—Appointment—Terms.
15.09.040	Meeting—Quorum—Officers.
15.09.050	Powers and duties.
15.09.055	Contracts and agreements.
15.09.060	Owner's duty to control pests and diseases.
15.09.070	Right of entry—Search warrant.
15.09.080	Failure to control horticultural pests and diseases—Remedies.
15.09.090	Hearing on liability of owner for costs or charges—Review.
15.09.100	Payment of expenses and costs—Penalty—Collection.
15.09.110	Refund of charges paid.
15.09.120	Disposition of moneys collected.
15.09.131	Operating budget—Source of funds.
15.09.135	Assessment—Public hearing—Rate—County review—Lien.
15.09.140	Abolishment of board.
15.09.900	Chapter cumulative.

15.09.010 Purpose. The purpose of this chapter is to enable counties to more effectively control and prevent the spread of horticultural pests and diseases. [1969 c 113 § 1.]

15.09.020 Creation of board. Either upon receiving a petition filed by twenty-five landowners within the county or on its own motion, the board of county commissioners in order to achieve the purposes of this chapter may, following a hearing, create a horticultural pest and disease board. [1969 c 113 § 2.]

15.09.030 Members—Appointment—Terms. Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be appointed by the director. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests and diseases, and the other members shall be residents of the county, shall own

land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. If no such qualified candidate resides in the county, a nonresident that owns property in the county and is engaged in the primary and commercial production of a horticultural product or products may be appointed as a member of the horticultural pest and disease board. [2009 c 96 § 1; 1988 c 254 § 7; 1969 c 113 § 3.]

15.09.040 Meeting—Quorum—Officers. Within thirty days after the appointed seats on the horticultural pest and disease board have been filled, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. [2010 c 8 § 6017; 1969 c 113 § 4.]

15.09.050 Powers and duties. Each horticultural pest and disease board shall have the following powers and duties:

(1) To receive complaints concerning the infection of horticultural pests and diseases on any parcel of land within the county;

(2) To inspect or cause to be inspected any parcel of land within the county for the purpose of ascertaining the presence of horticultural pests and diseases as provided by RCW 15.09.070;

(3) To order any landowner to control and prevent the spread of horticultural pests and diseases from his or her property, as provided by RCW 15.09.080;

(4) To control and prevent the spread of horticultural pests and diseases on any property within the county as provided by RCW 15.09.080, and to charge the owner for the expense of such work in accordance with RCW 15.09.080 and 15.09.090;

(5) To employ such persons and purchase such goods and machinery as the board of county commissioners may provide;

(6) To adopt, following a hearing, such rules and regulations as may be necessary for the administration of this chapter. [2010 c 8 § 6018; 1969 c 113 § 5.]

15.09.055 Contracts and agreements. The horticultural pest and disease board may enter into contracts and agreements with federal, state, and local government agencies, Indian tribes, and any other organization to perform any duties pursuant to the identification, detection, control, or eradication of horticultural pests and diseases. [2000 c 144 § 35.]

15.09.060 Owner's duty to control pests and diseases. Each owner of land containing any plant or plants shall perform or cause to be performed such acts as may be necessary to control and to prevent the spread of horticultural pests and diseases, as such pests and diseases are defined under RCW 15.08.010, as now or hereafter amended, or as such pests and diseases are defined by the director of the department of agriculture in accordance with the purpose of this chapter and with the provisions of the Administrative Procedure Act,

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chapter 34.05 RCW. The word "owner" as used in this section shall mean the possessor or possessors of any form of legal or equitable title to land and entitlement to possession. For purposes of liability under this chapter, the owners of land shall be jointly and severally liable. [1969 c 113 § 6.]

15.09.070 Right of entry—Search warrant. Any authorized agent or employee of the county horticultural pest and disease board may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens, general inspection, and the performance of such acts as are necessary for controlling and preventing the spreading of horticultural pests and diseases. Such entry may be without the consent of the owner, and no action for trespass or damages shall lie so long as such entry and any activities connected therewith are undertaken and prosecuted with reasonable care.

Should any such employee or authorized agent of the county horticultural pest and disease board be denied access to such property where such access was sought to carry out the purpose and provisions of this chapter, the said board may apply to any court of competent jurisdiction for a search warrant authorizing access to such property for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1969 c 113 § 7.]

15.09.080 Failure to control horticultural pests and diseases—Remedies. (1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his or her land, as is his or her duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person. Any action that the board determines requires the destruction of infested plants, absent the consent of the owner, shall be subject to the provisions of subsection (3) of this section.

(3) In the event the owner of land fails to control and prevent the spread of horticultural pests and diseases as required by RCW 15.09.060, and the county horticultural pest and disease board determines that actions it has taken to control and prevent the spread of such pests or diseases has not been effective or the county horticultural pest and disease board determines that no reasonable measures other than removal of the plants will control and prevent the spread of such pests or diseases, the county horticultural pest and disease board may petition the superior court of the county in which the property is situated for an order directing the owner to show cause why the plants should not be removed at the owner's expense and for an order authorizing removal of said infested plants. The petition shall state: (a) The legal description of the property on which the plants are located; (b) the name and place of residence, if known, of the owners of said property;

(c) that the county horticultural pest and disease board has, through its officers or agents, inspected said property and that the plants thereon, or some of them, are infested with a horticultural pest or disease as defined by RCW 15.08.010; (d) the dates of all notices and orders delivered to the owners pursuant to this section; (e) that the owner has failed to control and prevent the spread of said horticultural pest or disease; and (f) that the county horticultural pest and disease board has determined that the measures taken by it have not controlled or prevented the spread of the pest or disease or that no reasonable measure can be taken that will control and prevent the spread of such pest or disease except removal of the plants. The petition shall request an order directing the owner to appear and show cause why the plants on said property shall not be removed at the expense of the owner, to be collected as provided in this chapter. The order to show cause shall direct the owner to appear on a date certain and show cause, if any, why the plants on the property described in the petition should not be removed at the owner's expense. The order to show cause and petition shall be served on the owner not less than five days before the hearing date specified in the order in the same manner as a summons and complaint. In the event the owner fails to appear or fails to show by competent evidence that the horticultural pest or disease has been controlled, then the court shall authorize the county horticultural pest and disease board to remove the plants at the owner's expense, to be collected as provided by this chapter. If the procedure provided herein is followed, no action for damages for removal of the plants shall lie against the county horticultural pest and disease board, its officers or agents, or the county in which it is situated. [2010 c 8 § 6019; 1991 c 257 § 1; 1982 c 153 § 4; 1969 c 113 § 8.]

Additional notes found at www.leg.wa.gov

15.09.090 Hearing on liability of owner for costs or charges—Review. Any person upon request and pursuant to the rules and regulations of the horticultural pest and disease board shall be entitled to a hearing before the board on any charge or cost for which such person is alleged to be liable under subsection (2) of RCW 15.09.080. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court of the county where the property is situated and to any damages suffered on account of disinfection work wrongfully undertaken, but no stay or injunction shall lie to delay any such disinfection work subsequent to notice given pursuant to RCW 15.09.080. [1969 c 113 § 9.]

15.09.100 Payment of expenses and costs—Penalty—Collection. Any amount charged to the owner of land in accordance with the provisions of RCW 15.09.080 and 15.09.090 shall be paid by such owner within sixty days of the date in which he or she was billed for such amount. If payment is not made within such sixty day period, the amount of such charge, together with a ten percent penalty surcharge, shall, for purposes of collection, become a tax lien under RCW 84.60.010, as now or hereafter amended, and shall be promptly collected as such by the county treasurer: PROVIDED, That where good cause is shown the board may extend for an additional two months the time period during

which payment shall be made. [2010 c 8 § 6020; 1969 c 113 § 10.]

15.09.110 Refund of charges paid. In regard to any charge made pursuant to RCW 15.09.080, if either the horticultural pest and disease board or the superior court on judicial review disallows such charge, then any amount paid on such charge, together with any interest or penalty, shall be promptly refunded by the county from the county's current expense fund or from any other county funds available. In addition, the county shall pay six percent simple annual interest on such amount refunded. [1969 c 113 § 11.]

15.09.120 Disposition of moneys collected. Any moneys collected under this chapter shall be placed in the county current expense fund together with any taxes collected pursuant to the provisions of RCW 15.08.260, as now or hereafter amended. [1969 c 113 § 12.]

15.09.131 Operating budget—Source of funds. Funding of the operating budget of a horticultural pest and disease board may be derived from any or all of the following:

(1) Moneys from the county general fund or other general revenues, as appropriated by the board of county commissioners or other county legislative authority;

(2) A horticultural tax, as authorized in RCW 15.08.260, levied by the county board of commissioners or other county legislative authority; or

(3) An assessment against all lands. [2000 c 144 § 33.]

15.09.135 Assessment—Public hearing—Rate—County review—Lien. (1) Prior to the levying of an assessment authorized in RCW 15.09.131, the horticultural pest and disease board shall hold a public hearing at which it will gather information to serve as a basis for classification and then classify the lands into suitable classification, including but not limited to orchard lands, range lands, dry lands, non-use lands, forest lands, or federal lands.

(2) The board shall develop and forward to the county board of commissioners or other county legislative authority, as a proposed level of assessment for each class, an amount that seems just. The assessment rate shall be either uniform per acre in its respective class, a flat rate per parcel, or a flat rate per parcel rate plus a uniform rate per acre: PROVIDED, That if no benefits are found to accrue to a class of land, a zero assessment may be levied.

(3) The county board of commissioners or other county legislative authority, upon receipt of the proposed levels of assessment from the horticultural pest and disease board, after a hearing, shall accept or modify by resolution, or refer back to the horticultural pest and disease board for its reconsideration, all or any portion of the proposed levels of assessment.

(4) The amount of the assessment constitutes a lien against the property. The assessments shall be subject to the same provisions as those for property tax collections, as provided in RCW 84.56.020, and shall be collected by the county treasurer under the authority in RCW 84.56.035. [2000 c 144 § 34.]

15.09.140 Abolishment of board. Upon receipt of a petition signed by twenty-five landowners within the county or on its own motion, the board of county commissioners may abolish the pest and disease board following a hearing and a finding that the purposes of this chapter would not be sufficiently served by the continued existence of such board. [1969 c 113 § 14.]

15.09.900 Chapter cumulative. The effects of the provisions of this chapter on the provisions of chapter 15.08 RCW shall be cumulative. [1969 c 113 § 15.]

Chapter 15.13 RCW

HORTICULTURAL PLANTS, CHRISTMAS TREES, AND FACILITIES—INSPECTION AND LICENSING

Sections

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Prior law: 1961 c 11 §§ 15.12.010 through 15.12.110; 1961 c 221 §§ 1 through 23 (codified as RCW 15.13.010 through 15.13.210, 15.13.900, and 15.13.910).

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15.13.250 Definitions. (Effective until July 1, 2014.)

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director's duly authorized representative.

(3) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants or Christmas trees are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants or Christmas trees.

(6) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(7) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants or Christmas trees at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants or Christmas trees are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants or Christmas trees, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(8) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(11) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material, including Christmas trees.

(12) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes.

(13) "This chapter" means this chapter and the rules adopted under this chapter.

(14) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(15) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

(16) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting United States number 2 or better standards for Christmas trees as specified by the United States department of agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both; weed and brush control; and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation, and irrigation.

(17) "Christmas tree grower" means any person who grows Christmas trees for sale. [2007 c 335 § 1; 2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Expiration date—2007 c 335: "This act expires July 1, 2014." [2007 c 335 § 19.]

15.13.250 Definitions. (Effective July 1, 2014.) For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director's duly authorized representative.

(3) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants.

(6) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(7) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(8) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(11) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material.

(12) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes.

(13) "This chapter" means this chapter and the rules adopted under this chapter.

(14) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(15) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment. [2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

15.13.260 Enforcement—Rules—Scope. (Effective until July 1, 2014.) The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing standards for grades and/or classifications for any horticultural plant.

(2) The director shall adopt rules for labeling or tagging horticultural plants.

(3) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(4) The director may adopt rules for the inspection and/or certification of any Christmas tree as to freedom from infestation by plant pests.

(5) The director shall adopt rules establishing fees for nursery dealer licenses and for inspection of horticultural plants and methods of fee collection.

(6) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(7) The director may adopt rules establishing categories of sales and fees for permits established in RCW 15.13.270.

(8) The director may adopt rules establishing fees for Christmas tree grower licenses and for inspection of Christmas trees and methods of fee collection. [2007 c 335 § 2; 2000 c 144 § 2; 1993 c 120 § 2; 1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.260 Enforcement—Rules—Scope. (Effective July 1, 2014.) The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing standards for grades and/or classifications for any horticultural plant.

(2) The director shall adopt rules for labeling or tagging horticultural plants.

(3) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(4) The director shall adopt rules establishing fees for nursery dealer licenses and for inspection of horticultural plants and methods of fee collection.

(5) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(6) The director may adopt rules establishing categories of sales and fees for permits established in RCW 15.13.270. [2000 c 144 § 2; 1993 c 120 § 2; 1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

15.13.262 Application of administrative procedure act. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial. [2000 c 144 § 3.]

15.13.265 Enforcement—Access to nursery dealer premises—Inspection. (Effective until July 1, 2014.) (1) The director may enter and inspect the horticultural facilities of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter.

(2) If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. The warrant shall be issued on probable cause. It is sufficient probable cause to show (a) the inspection is pursuant to a general administrative practice to determine compliance with this chapter or (b) the director has reason to believe that a violation of this chapter has occurred, is occurring, or may occur.

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(3) Denial of access to the director to perform inspections may subject a nursery dealer or Christmas tree grower to license revocation. [2007 c 335 § 3; 2000 c 144 § 4; 1993 c 120 § 7.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.265 Enforcement—Access to nursery dealer premises—Inspection. (Effective July 1, 2014.) (1) The director may enter and inspect the horticultural facilities of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter.

(2) If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. The warrant shall be issued on probable cause. It is sufficient probable cause to show (a) the inspection is pursuant to a general administrative practice to determine compliance with this chapter or (b) the director has reason to believe that a violation of this chapter has occurred, is occurring, or may occur.

(3) Denial of access to the director to perform inspections may subject a nursery dealer to revocation of the nursery license. [2000 c 144 § 4; 1993 c 120 § 7.]

15.13.270 Nursery dealer licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. (Effective until July 1, 2014.) The provisions of this chapter relating to nursery dealer licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales.

All horticultural plants sold under such a permit shall be in compliance with the provisions of this chapter. [2007 c 335 § 4; 2000 c 144 § 5; 1993 c 120 § 3; 1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.270 Licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. (Effective July 1, 2014.) The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales.

All horticultural plants sold under such a permit shall be in compliance with the provisions of this chapter. [2000 c

144 § 5; 1993 c 120 § 3; 1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

15.13.280 Nursery dealer licenses—Farmers markets—Application—Fees—Expiration—Posting—Audit.

(1) No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license shall apply through the master license system. The application shall be accompanied by the appropriate fee. The director shall establish a schedule of fees for retail and wholesale nursery dealer licenses based upon the person's gross annual sales of horticultural plants at each place of business. The schedule for retail licenses shall include separate fees for at least the following two categories:

- (a) A person whose gross annual sales of horticultural plants do not exceed two thousand five hundred dollars; and
- (b) A person whose gross annual sales of horticultural plants exceed two thousand five hundred dollars.

(2) A person conducting both retail and wholesale sales of horticultural plants at the same place of business shall secure one of the following:

- (a) A retail nursery dealer license if retail sales of the horticultural plants exceed such wholesale sales; or
- (b) A wholesale nursery dealer license if wholesale sales of the horticultural plants exceed such retail sales.

(3) The director may issue a wholesale nursery dealer license to a person operating as a farmers market at which individual producers are selling directly to consumers. The license shall be at the appropriate level to cover all persons selling horticultural plants at each site at which the person operates a market.

(4) The licensing fee that must accompany an application for a new license shall be based upon the applicant's estimated gross sales of horticultural plants for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of these products during the preceding licensing year.

(5) The license expires on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall be posted in a conspicuous place open to the public in the location for which it was issued.

(6) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [2000 c 144 § 6; 1993 c 120 § 4; 1987 c 35 § 1; 1985 c 36 § 4; 1983 1st ex.s. c 73 § 3; 1982 c 182 § 20; 1971 ex.s. c 33 § 4.]

Master license

expiration date: RCW 19.02.090.

system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: RCW 15.13.250(10).

to include additional licenses: RCW 19.02.110.

15.13.285 Nursery dealer licenses—Fee surcharge.

The director may, with the advice of the nursery advisory committee, establish by rule a surcharge to the fee for a nursery dealer license. The surcharge shall not exceed twenty percent of the license fee and shall be paid at the same time that the license fee is paid. Moneys collected from the surcharge shall be deposited in the agricultural local fund and shall be

used solely to support research projects which are of general benefit to the nursery industry and are recommended by the nursery advisory committee. [2000 c 144 § 7; 1992 c 23 § 1.]

Additional notes found at www.leg.wa.gov

15.13.290 Nursery dealer licenses—Additional charge for late renewal.

If any application for renewal of a nursery dealer license is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license is issued. [2000 c 144 § 8; 1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.13.300 Nursery dealer licenses—Application—Contents.

Application for a license shall include:

(1) The full name of the person applying for the license and if the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or the names of the officers of the association or corporation.

(2) The principal business address of the applicant in the state and elsewhere.

(3) The address for the location or locations for which the licenses are being applied.

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

(5) Any other necessary information prescribed by the director. [2000 c 144 § 9; 1982 c 182 § 22; 1971 ex.s. c 33 § 6.]

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: Chapter 19.02 RCW.

15.13.310 Assessment on gross sale price of wholesale market value of certain horticultural plants—Method for determining—Due date—Gross sale period—Audit.

(1) An annual assessment shall be levied on the gross sale price of the wholesale market value for all horticultural plants of the genera *Chaenomeles*, *Cydonia*, *Crataegus*, *Malus*, *Prunus*, *Pyrus*, *Sorbus*, and *Vitis* produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer during any license period. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted or budded and planted for growing-on in the nursery. The director shall by rule determine the rate of an assessment needed to carry out the grapevine and fruit tree certification and nursery improvement programs set forth in RCW 15.13.470 and chapter 15.14 RCW.

The wholesale market price may be determined by the wholesale catalogue price of the seller of the horticultural plants assessed under this section or of the shipper moving such nursery stock out of the state. If the seller or shipper does not have a catalogue, then the wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining the average

wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) The assessment is due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous year.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid. [2002 c 215 § 1; 2000 c 144 § 10; 1993 c 120 § 5; 1990 c 261 § 4; 1987 c 35 § 2; 1983 1st ex.s. c 73 § 4; 1971 ex.s. c 33 § 7.]

15.13.311 Christmas tree grower exemptions—License—Fees. (Expires July 1, 2014.) (1) Any Christmas tree grower owning Christmas trees, whose business consists solely of retail sales to the ultimate consumer, is exempt from the requirements of this section if:

(a) The grower has less than one acre of Christmas trees; or

(b) The grower harvests, by u-cut or otherwise, fewer than four hundred Christmas trees per year.

(2) Licensed nursery dealers who furnish live plants for planting to Christmas tree growers are exempt from the requirements of this section.

(3) No person may operate as a Christmas tree grower without first obtaining a license from the department.

(a) The application must be accompanied by an annual fee, as established by the director in rule. The annual fee must not exceed forty dollars as a basic charge and a maximum of four dollars per acre as an acreage assessment. The annual Christmas tree grower license fee for any person may not exceed five thousand dollars.

(b) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [2007 c 335 § 5.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.312 Christmas tree grower license—Application. (Expires July 1, 2014.) Application for a Christmas tree grower license shall include:

(1) The full name of the person applying for the license, whether the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, and if the applicant is a firm or partnership the full name of each member of the firm or partnership, and if the applicant is an association or corporation the names of the officers of the association or corporation;

(2) The principal business address of the applicant in the state and elsewhere;

(3) The address and acreage of Christmas trees for each location included in the application;

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant; and

(5) Any other information prescribed by the director. [2007 c 335 § 6.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.314 Christmas tree program—Advisory committee. (Expires July 1, 2014.) (1) An advisory committee

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is established to advise the director in the administration of the Christmas tree program.

(2) When appointing this committee, the director shall consider names submitted by Christmas tree growers and by established Christmas tree grower associations having members in the state.

(3) The committee consists of no fewer than five members, representing the interests of licensed Christmas tree growers and the Christmas tree industry, and the director or the director's designee.

(4) The terms of the members of the committee shall be staggered and the members shall serve a term of three years or until their successor has been appointed.

(5) In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [2007 c 335 § 8.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.315 Grapevine certification and nursery improvement program—Advisory committee. An advisory committee is established to advise the director in the administration of the grapevine certification and nursery improvement program.

(1) The committee consists of two grapevine nursery dealers; three grape growers, at least two of whom grow wine grapes; one winery representative; a university researcher; and the director.

(2) When appointing this committee, the director shall consider names submitted by the Washington association of wine grape growers and the Washington state grape society.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed. [2002 c 215 § 2.]

15.13.320 Fruit tree certification and nursery improvement program—Advisory committee. An advisory committee is hereby established to advise the director in the administration of the fruit tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nursery dealers and the director or the director's designated appointee.

(2) When appointing this committee, the director shall consider names submitted by the Washington state nursery and landscape association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments. [2000 c 144 § 11; 1993 c 120 § 6; 1990 c 261 § 5; 1983 1st ex.s. c 73 § 5; 1971 ex.s. c 33 § 8.]

15.13.335 Nursery advisory committee—Members—Terms. A nursery advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of not less than four members, representing the interests of licensed nursery dealers and the nursery industry, appointed by the director in consultation with the following persons: The president of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery and landscape association; and the director or the director's designated appointee.

(2) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [2000 c 144 § 12; 1990 c 261 § 6; 1983 1st ex.s. c 73 § 6.]

15.13.340 Late fee on delinquent assessments. (Effective until July 1, 2014.) (1) A late fee of twenty percent of the amount due shall be levied on all delinquent assessments for each license period the assessment is delinquent.

(2) The director shall not issue a nursery dealer license or Christmas tree grower license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [2007 c 335 § 9; 2000 c 144 § 13; 1971 ex.s. c 33 § 10.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.340 Late fee on delinquent assessments. (Effective July 1, 2014.) (1) A late fee of twenty percent of the amount due shall be levied on all delinquent assessments for each license period the assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [2000 c 144 § 13; 1971 ex.s. c 33 § 10.]

15.13.360 Hearings—Subpoenas. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records for purposes of investigating compliance with this chapter or for any hearing under this chapter. [2000 c 144 § 14; 1971 ex.s. c 33 § 12.]

15.13.370 Request by licensee for inspector's services during shipping season—Certificate of inspection—Other requests for inspection and/or certification services—Fees. (Effective until July 1, 2014.) (1) Any person licensed under the provisions of this chapter may request the services of a department inspector at the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to the licensee a certificate of inspection signed by the inspector covering any horticultural plants or Christmas trees which the inspector finds to be in compliance with the provisions of this chapter.

(2) Any person financially interested in any horticultural plants or Christmas trees may request inspection and/or certification services provided for horticultural plants or Christmas trees under this chapter.

(3) To facilitate the marketing of agricultural commodities and other plant products, the director may provide, if

requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service. [2007 c 335 § 10; 2002 c 215 § 3; 2000 c 144 § 15; 1993 c 120 § 8; 1990 c 261 § 8; 1971 ex.s. c 33 § 13.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.370 Request by licensee for inspector's services during shipping season—Certificate of inspection—Other requests for inspection and/or certification services—Fees. (Effective July 1, 2014.) (1) Any person licensed under the provisions of this chapter may request the services of a department inspector at the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to the licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds to be in compliance with the provisions of this chapter.

(2) Any person financially interested in any horticultural plants may request inspection and/or certification services provided for horticultural plants under this chapter.

(3) To facilitate the marketing of agricultural commodities and other plant products, the director may provide, if requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service. [2002 c 215 § 3; 2000 c 144 § 15; 1993 c 120 § 8; 1990 c 261 § 8; 1971 ex.s. c 33 § 13.]

15.13.380 Inspection fees—When due and payable—Arrears. (1) The inspection fees provided for in this chapter shall become due and payable upon billing by the department.

(2) A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears.

(3) In addition to any other penalties, the director may refuse to perform any inspection or certification service for any person who is in arrears or who fails to pay any assessment due under the provisions of this chapter or assessments required by law to any agricultural commodity commission unless the person makes payment in full prior to such inspection or certification service. [2000 c 144 § 16; 1990 c 261 § 9; 1971 ex.s. c 33 § 14.]

15.13.390 Unlawful selling, shipment, or transport of horticultural plants or Christmas trees within state, when. (Effective until July 1, 2014.) It is unlawful for any person to sell, ship, or transport any horticultural plant or Christmas tree in this state unless it meets standards established in rule for freedom from infestation by plant pests and the other requirements of this chapter. [2007 c 335 § 11; 2000 c 144 § 17; 1993 c 120 § 9; 1971 ex.s. c 33 § 15.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.390 Unlawful selling, shipment, or transport of plants within state, when. (Effective July 1, 2014.) It is unlawful for any person to sell, ship, or transport any horticultural plant in this state unless it meets standards established in rule for freedom from infestation by plant pests and the other requirements of this chapter. [2000 c 144 § 17; 1993 c 120 § 9; 1971 ex.s. c 33 § 15.]

15.13.400 Unlawful shipment or delivery of horticultural plants into state, when—Certificate and inspection requirements—Christmas trees—Rules—Hearing. (Effective until July 1, 2014.) (1) It is unlawful for any person to ship or deliver any horticultural plant into this state unless it is accompanied by an inspection certificate from the state or country of origin stating that the horticultural plant meets the requirements of this chapter. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director on or before the date the horticultural plants enter into the state.

(2) The director may by rule require that any or all horticultural plants or Christmas trees delivered or shipped into the state be inspected for conformance with the requirements of this chapter prior to release by the person delivering or transporting such horticultural plants or Christmas trees even though accompanied by acceptable inspection certificates issued by the state or country of origin.

(3) Any shipment found not to be in compliance with the requirements of this chapter may be returned to the consignor at the consignor's expense. The consignor may subsequently request a hearing which shall be held in conformance with RCW 34.05.479 or other applicable provision of chapter 34.05 RCW. [2007 c 335 § 12; 2000 c 144 § 18; 1993 c 120 § 10; 1971 ex.s. c 33 § 16.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements—Rules—Hearing. (Effective July 1, 2014.) (1) It is unlawful for any person to ship or deliver any horticultural plant into this state unless it is accompanied by an inspection certificate from the state or country of origin stating that the horticultural plant meets the requirements of this chapter. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director on or before the date the horticultural plants enter into the state.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the state be inspected for conformance with the requirements of this chapter prior to release by the person delivering or transporting such horticultural plants even though accompanied by acceptable inspection certificates issued by the state or country of origin.

(3) Any shipment found not to be in compliance with the requirements of this chapter may be returned to the consignor at the consignor's expense. The consignor may subsequently request a hearing which shall be held in conformance with RCW 34.05.479 or other applicable provision of chapter 34.05 RCW. [2000 c 144 § 18; 1993 c 120 § 10; 1971 ex.s. c 33 § 16.]

15.13.410 Shipments into state to be marked or tagged. Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner.

The director may, whenever the director finds that any horticultural plant is not properly marked, order it off sale

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until it is properly marked, or order that it be returned to the consignor for proper marking. [2000 c 144 § 19; 1993 c 120 § 11; 1990 c 261 § 10; 1971 ex.s. c 33 § 17.]

15.13.420 Unlawful acts enumerated. (Effective until July 1, 2014.) It is unlawful for any person:

(1) To falsely claim to be an agent or representative of any nursery dealer in horticultural plants or Christmas tree grower;

(2) To sell or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, method of propagation, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(3) To alter an official certificate or other official inspection document for plant materials, including Christmas trees, covered by this chapter or to falsely represent a document as an official certificate;

(4) To substitute any horticultural plant, Christmas tree, or agricultural commodity for a horticultural plant, Christmas tree, or agricultural commodity covered by an inspection certificate. [2007 c 335 § 13; 2000 c 144 § 20; 1993 c 120 § 12; 1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.420 Unlawful acts enumerated. (Effective July 1, 2014.) It is unlawful for any person:

(1) To falsely claim to be an agent or representative of any nursery dealer in horticultural plants;

(2) To sell or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, method of propagation, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(3) To alter an official certificate or other official inspection document for plant materials covered by this chapter or to falsely represent a document as an official certificate;

(4) To substitute any horticultural plant or agricultural commodity for a horticultural plant or agricultural commodity covered by an inspection certificate. [2000 c 144 § 20; 1993 c 120 § 12; 1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

15.13.425 False advertisements. No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490(2) by reason of dissemination of any false advertisement, unless the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused dissemination of the false advertisement. [2000 c 144 § 21; 1993 c 120 § 13.]

15.13.430 Hold order on damaged, infested, or infected horticultural plants or Christmas trees—Selling or moving unlawful. (*Effective until July 1, 2014.*) When the director has cause to believe that any horticultural plants or Christmas trees are damaged or are infested or infected by any plant pest, the director may issue a hold order on such horticultural plants or Christmas trees. A hold order may prescribe conditions under which the damaged, infested, or infected material must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the material for sale. It is unlawful to sell or move such plants until released in writing by the director. [2007 c 335 § 14; 2000 c 144 § 22; 1993 c 120 § 14; 1971 ex.s. c 33 § 19.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.430 Hold order on damaged, infested, or infected plants—Selling or moving unlawful. (*Effective July 1, 2014.*) When the director has cause to believe that any horticultural plants are damaged or are infested or infected by any plant pest, the director may issue a hold order on such horticultural plants. A hold order may prescribe conditions under which plants must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the plant material for sale. It is unlawful to sell or move such plants until released in writing by the director. [2000 c 144 § 22; 1993 c 120 § 14; 1971 ex.s. c 33 § 19.]

15.13.440 Order of condemnation—Grounds for issuance. (*Effective until July 1, 2014.*) The director shall condemn any horticultural plants shipped or sold when such horticultural plants are found to be dead, in a dying condition, seriously broken, diseased or infested to the extent that treatment is not practical, damaged, frozen, or abnormally pot-bound. The director shall condemn any Christmas trees shipped or sold if they are found to be diseased, infected, or infested to the extent that treatment is not practical. The director shall order such horticultural plants or Christmas trees to be destroyed or returned at shipper's option. [2007 c 335 § 15; 2000 c 144 § 23; 1993 c 120 § 15; 1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.440 Order of condemnation—Grounds for issuance. (*Effective July 1, 2014.*) The director shall condemn any horticultural plants shipped or sold when such horticultural plants are found to be dead, in a dying condition, seriously broken, diseased or infested to the extent that treatment is not practical, damaged, frozen, or abnormally pot-bound. The director shall order such horticultural plants to be destroyed or returned at shipper's option. [2000 c 144 § 23; 1993 c 120 § 15; 1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

15.13.445 Order or action of director—Hearing opportunity. Upon issuance of an order or upon action by the director under RCW 15.13.400, 15.13.410, 15.13.430, or 15.13.440, the consignor of the plant material may request a hearing under chapter 34.05 RCW. [2000 c 144 § 24; 1993 c 120 § 16.]

15.13.447 Prohibition on recovery of damages. No state court shall allow the recovery of damages from administrative action, hold order, or condemnation order if the court finds there was probable cause for the action. [2000 c 144 § 25.]

15.13.450 Injunction to prevent violations. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court in Thurston county or the county in which the violation occurs, notwithstanding the existence of other remedies at law. [2000 c 144 § 26; 1971 ex.s. c 33 § 21.]

15.13.455 Injunction to restrain operation as nursery dealer or Christmas tree grower without valid license—Costs, attorneys' fees, and expenses. (*Effective until July 1, 2014.*) (1) The director may apply to the superior court of Thurston county for a prompt hearing on, and the court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant an injunction restraining any person from operating as a nursery dealer or Christmas tree grower without a valid license.

(2) An order restraining any person from operating as a nursery dealer or Christmas tree grower without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [2007 c 335 § 16; 2000 c 144 § 27; 1983 1st ex.s. c 73 § 7.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.455 Injunction to restrain operation as nursery dealer without valid license—Costs, attorneys' fees, and expenses. (*Effective July 1, 2014.*) (1) The director may apply to the superior court of Thurston county for a prompt hearing on, and the court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant an injunction restraining any person from operating as a nursery dealer without a valid license.

(2) An order restraining any person from operating as a nursery dealer without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [2000 c 144 § 27; 1983 1st ex.s. c 73 § 7.]

15.13.470 Disposition of moneys collected under chapter—Expenditure. (*Effective until July 1, 2014.*) (1) Except as provided in RCW 15.13.285 and in subsections (2), (3), and (4) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter. No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected under RCW 15.13.310 shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington grapevine and fruit tree certification and nursery improve-

ment programs as set forth in this chapter and chapter 15.14 RCW.

(3) All fees collected under RCW 15.13.311 shall be deposited in the Christmas tree account within the agricultural local fund to be used only for the Washington Christmas tree program as established under this chapter, which may include market surveys and research related to Christmas trees.

(4) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund. [2007 c 335 § 17; 2002 c 215 § 4; 2000 c 144 § 28; 1999 c 144 § 16; 1993 c 120 § 17; 1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

Additional notes found at www.leg.wa.gov

15.13.470 Disposition of moneys collected under chapter—Expenditure. (Effective July 1, 2014.) (1) Except as provided in RCW 15.13.285 and in subsections (2) and (3) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter. No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected under RCW 15.13.310 shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington grapevine and fruit tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

(3) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund. [2002 c 215 § 4; 2000 c 144 § 28; 1999 c 144 § 16; 1993 c 120 § 17; 1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Additional notes found at www.leg.wa.gov

15.13.477 Compliance agreements. The director may enter into compliance agreements with any person for the purpose of carrying out the provisions of this chapter. [2000 c 144 § 29.]

15.13.480 Cooperative contracts or agreements to further chapter—Agreements to facilitate export. The director may cooperate with and enter into contracts or agreements with governmental agencies of this state and other states, agencies of the federal government, and any other organization in order to carry out the purpose and provisions of this chapter.

The director may enter into agreements with the United States department of agriculture for the purpose of issuing phytosanitary certificates and other inspection documents, according to federal procedures, to facilitate the export of products from the state. [2000 c 144 § 30; 1993 c 120 § 18; 1971 ex.s. c 33 § 26.]

15.13.490 Compliance with chapter—Violation—Penalties. (Effective until July 1, 2014.) Any person who fails to comply with this chapter may be subject to:

(1) Denial, revocation, or suspension of the person's nursery dealer license or Christmas tree grower license; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [2007 c 335 § 18; 2000 c 144 § 31; 1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.490 Compliance with chapter—Violation—Penalties. (Effective July 1, 2014.) Any person who fails to comply with this chapter may be subject to:

(1) Denial, revocation, or suspension of the person's nursery dealer license; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [2000 c 144 § 31; 1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

15.13.500 Suspension of license—Reissuance. (Expires July 1, 2014.) The department shall immediately suspend any license issued under this chapter if the holder of the license has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for licensure during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2007 c 335 § 7.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 33 § 22.]

15.13.940 Severability—1971 ex.s. c 33. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 33 § 28.]

Chapter 15.14 RCW PLANTING STOCK

Sections

15.14.010	Definitions.
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15.14.065	Acceptance as certified, registered, foundation, or breeder planting stock.
15.14.075	Agreements with Washington State University, governmental entities, and other organizations.
15.14.085	Acquisition of property—Use of property.
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15.14.105	Unlawful acts.
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15.14.125	Late charge on fee or assessment.
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15.14.145	Deposit of funds in planting stock certification account—Use.
15.14.900	Chapter cumulative and nonexclusive.
15.14.920	Severability—1961 c 83.

15.14.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director's designee.

(3) "Person" means an individual, firm, partnership, corporation, company, association, or public entity and every officer, agent, or employee of these entities.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or weeds or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Micropropagated plants" means plants propagated using aseptic laboratory techniques and an artificial culture medium.

(6) "Tolerance" means the maximum acceptable percentage of planting stock that is diseased, infected by plant pests, defective, or off-type based on visual inspection or laboratory testing by the director or other authorized person.

(7) "Planting stock" includes any plant material used in the propagation of horticultural, floricultural, viticultural, or olericultural plants for the purpose of being sold, offered for sale, or distributed for planting or reproduction purposes.

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or sponsoring plant breeder or institution, which provides the source of foundation planting stock.

(9) "Foundation planting stock" means planting stock that has been so handled as to maintain genetic characteristics and that has been:

(a) Increased directly from breeder planting stock; or

(b) Designated as foundation planting stock by the director.

(10) "Registered planting stock" means planting stock of a quality suitable for the production of certified planting stock that has been so handled as to maintain genetic characteristics and that is:

(a) Increased directly from foundation or registered planting stock; or

(b) Designated as registered planting stock by the director.

(11) "Certified planting stock" means the progeny of foundation, registered, or certified planting stock that has been so handled as to maintain genetic characteristics, that has met certification standards authorized by this chapter, and that has been certified by the director. [1999 c 144 § 1; 1989 c 354 § 84; 1983 c 3 § 19; 1961 c 83 § 1.]

Additional notes found at www.leg.wa.gov

15.14.015 Rules—Scope. The director may adopt rules necessary to carry out the purpose and provisions of this chapter concerning, but not limited to:

(1) Certification of planting stock as to freedom from infection by plant pests, variety, classification, and grade.

(2) Establishment of tolerances for planting stock that is diseased, infected with plant pests, defective, or off-type.

(3) Establishment of standards and grades for planting stock.

(4) Labeling, identification, grading, and packing of foundation, registered, and certified planting stock.

(5) Inspection and testing of foundation, registered, and certified planting stock prior to planting during the growing season or seasons, prior to and during harvest, and subsequent to harvest.

(6) Exclusion and removal of diseased, infected with plant pests, defective, or off-type plants from foundation, registered, and certified planting stock.

(7) Establishing processes, site requirements, and criteria for participation in programs authorized by this chapter.

(8) Cultivation and sanitation practices in growing, storing, distributing, and processing foundation, registered, and certified planting stock.

(9) Establishing recordkeeping requirements.

(10) Production, utilization, and testing of micropropagated plants for foundation, registered, and certified planting stock.

(11) Establishment of fees and assessments for inspection, testing, and certification of planting stock and other services authorized by this chapter. [1999 c 144 § 2; 1961 c 83 § 3. Formerly RCW 15.14.030.]

15.14.025 Certificates—Samples for inspection and testing—Publish information—Notify purchasers of results. The director may:

(1) Issue certificates stating that planting stock found by the director or other authorized person to be in compliance with rules adopted under this chapter is foundation, registered, or certified planting stock.

(2) Take samples in reasonable amounts as necessary of planting stock to inspect and test for genetic characteristics and/or freedom from infection by plant pests.

(3) Publish names of growers participating in certification programs and inspection results.

(4) Require growers participating in certification programs to notify purchasers of planting stock when postharvest inspections or tests show the planting stock represented as foundation, registered, or certified has failed to meet minimum standards for certification. [1999 c 144 § 3; 1961 c 83 § 7. Formerly RCW 15.14.070.]

15.14.035 Inspection of property, premises, or records—Denial of access—Search warrant. In order to carry out the purposes of this chapter, the director may enter at reasonable times as determined by the director and inspect any property or premises and any records required under this chapter. If the director is denied access to any property, premises, or records, the director may suspend, cancel, or refuse certification or other approval of the planting stock or may apply to a court of competent jurisdiction for a search warrant authorizing access to the property, premises, or records. The court may upon the application issue a search warrant for the purpose requested. [1999 c 144 § 4.]

15.14.045 Compliance agreements authorized—Suspension or cancellation—Hearing. The director may enter into compliance agreements with any grower of foundation, registered, or certified planting stock for the purpose of carrying out the provisions of this chapter. The director may suspend or cancel any compliance agreement for cause. Upon notice by the director to suspend or cancel a compliance agreement, a person may request a hearing under chapter 34.05 RCW. [1999 c 144 § 5.]

15.14.050 Registered, foundation, and breeder planting stock—Availability to producers and commercial growers—Restrictions on use—Fees. For purposes of maintaining and/or improving the genetic characteristics and freedom from infection by plant pests of any registered, foundation, and breeder planting stock, the director may acquire, propagate, and distribute registered, foundation, and breeder planting stock to producers and commercial growers. The director may charge fees for the planting stock and may place restrictions on its use and propagation by producers and commercial growers. [1999 c 144 § 6; 1961 c 83 § 5.]

15.14.065 Acceptance as certified, registered, foundation, or breeder planting stock. The director may accept as certified, registered, foundation, or breeder planting stock any planting stock grown or produced by Washington State University, the United States department of agriculture or other propagators whose plant materials are produced in conformance with the requirements of this chapter and rules adopted under this chapter. [1999 c 144 § 7; 1961 c 83 § 11. Formerly RCW 15.14.110.]

15.14.075 Agreements with Washington State University, governmental entities, and other organizations. The director may cooperate with and enter into agreements with Washington State University, the United States department of agriculture, other state and federal agencies, and any other organization in order to carry out the purposes and provisions of this chapter. [1999 c 144 § 8; 1961 c 83 § 12. Formerly RCW 15.14.120.]

15.14.085 Acquisition of property—Use of property. The director may acquire by gift, grant, or endowment from public or private sources, as may be made in trust or otherwise, for the use and benefit of the purposes of this chapter, real property and any other type property, and expend the same or any income therefrom according to the terms of the

gift, grant, or endowment. [1999 c 144 § 9; 1961 c 83 § 4. Formerly RCW 15.14.040.]

15.14.095 Failure to meet certification requirements—Director's options—Notice—Hearing. The director may suspend, cancel, or refuse certification or other approval of any planting stock that fails to meet the certification requirements authorized in this chapter. Upon notice by the director to suspend, cancel, or refuse certification or other approval of any planting stock, a person may request a hearing under chapter 34.05 RCW. [1999 c 144 § 10.]

15.14.105 Unlawful acts. It is unlawful for any person to sell, offer for sale, hold for sale, label, identify, represent, or to advertise any planting stock as being certified, registered, foundation, or breeder planting stock unless it complies with the requirements of this chapter and rules adopted under this chapter. [1999 c 144 § 11; 1961 c 83 § 14. Formerly RCW 15.14.140.]

15.14.115 Injunctions. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of other remedies at law. [1961 c 83 § 15. Formerly RCW 15.14.150.]

15.14.125 Late charge on fee or assessment. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears for any fee or assessment authorized by this chapter. [1999 c 144 § 12.]

15.14.135 Noncompliance by growers—Director may withhold services. The director may withhold services to growers of planting stock for refusal to comply with the provisions of this chapter or its rules, for nonpayment of fees and assessment moneys owed to the department by law, or for nonpayment of any assessment moneys due to an agricultural commodity commission. [1999 c 144 § 13.]

15.14.145 Deposit of funds in planting stock certification account—Use. All the moneys collected under the provisions of this chapter shall be paid to the director and deposited in the planting stock certification account within the agricultural local fund and shall be used only to carry out the purposes and provisions of this chapter. [1999 c 144 § 14; 1961 c 83 § 13. Formerly RCW 15.14.130.]

15.14.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 83 § 16.]

15.14.920 Severability—1961 c 83. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 83 § 18.]

Chapter 15.15 RCW
CERTIFIED SEED POTATOES

Sections

- 15.15.005 Legislative findings.
 15.15.010 Restricted seed potato production area—Growers' petition—Department of agriculture—Director—Rules.
 15.15.020 Violation or threatened violation of chapter—Action to enjoin.
 15.15.900 Effective date—1997 c 176.

15.15.005 Legislative findings. The legislature finds that the production of high quality certified seed potatoes within the state requires conditions that are as free as possible from insect pests and plant diseases and that ensuring these conditions exist is in the public interest. The legislature further finds that the production of other potatoes intermixed with or in close proximity to a concentrated seed potato production area poses an increased risk of introduction of plant diseases and insect pests. [1997 c 176 § 1.]

15.15.010 Restricted seed potato production area—Growers' petition—Department of agriculture—Director—Rules. Growers of seed potatoes, certified in accordance with rules adopted under chapter 15.14 RCW, may submit a petition to the director of the department of agriculture requesting that the director establish a restricted seed potato production area. The petition shall include the proposed geographic boundaries of the restricted seed potato production area, and the types of restrictions that are proposed to apply to the growing of nonseed potatoes. The petition shall contain the signatures of at least fifty percent of the growers of certified seed potatoes who have produced at least fifty percent of the certified seed potatoes within the proposed restricted seed potato production area in each of the two preceding years.

Upon receipt of a petition submitted in accordance with this section, the director of the department of agriculture shall, within sixty days of receipt of the petition, investigate the need of establishing a restricted seed potato production area. The director may propose rules and hold public hearings in the area affected by the proposed rules. The director has the authority to adopt rules in accordance with chapter 34.05 RCW to establish restricted seed potato production areas to prevent the increased exposure to plant diseases and insect pests that adversely affect the ability to meet standards for certification of seed potatoes established under chapter 15.14 RCW. [1997 c 176 § 2.]

15.15.020 Violation or threatened violation of chapter—Action to enjoin. The director of the department of agriculture may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1997 c 176 § 3.]

15.15.900 Effective date—1997 c 176. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 1997]. [1997 c 176 § 5.]

Chapter 15.17 RCW
STANDARDS OF GRADES AND PACKS

Sections

- 15.17.010 Purpose.
 15.17.020 Definitions.
 15.17.030 Enforcement—Director's duties—Rules.
 15.17.050 Rules—Authority of director.
 15.17.060 Adoption of standards.
 15.17.080 Fresh fruits—Culls—Basket markings—Designation on bills of lading, invoices, etc.
 15.17.090 Private grades or brands—Approval and registration.
 15.17.140 Inspections and certifications—Request for—Fees.
 15.17.143 Certificates of compliance—Petition by shipper—Rules.
 15.17.150 Inspections and certifications—Fees adopted by rule—Failure to pay.
 15.17.170 Inspection certificate or other official document as evidence.
 15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants.
 15.17.200 Noncomplying fruits or vegetables—Enforcement procedure—Notice—Hearing.
 15.17.210 Fruits or vegetables—Unlawful practices when selling, offering for sale, or shipping—Containers—Director's powers—Rules.
 15.17.213 Exemption of certain fruits or vegetables from chapter.
 15.17.230 Fruit and vegetable inspection districts.
 15.17.240 Fruit and vegetable inspection account—District subaccounts—Fees—Rules.
 15.17.247 District two—Transfer of funds—Control of *Rhagoletis pomonella*.
 15.17.260 Injunctions.
 15.17.270 Cooperation with governmental agencies.
 15.17.290 Violation of chapter or rules—Suspension—Civil penalty.
 15.17.900 Provisions cumulative and nonexclusive.
 15.17.940 Severability—1963 c 122.

Grain and other commodities, standard grades: Chapter 22.09 RCW.

Weights and measures, standards, packages, boxes, etc.: Chapter 19.94 RCW.

15.17.010 Purpose. The purpose of this chapter is to provide for the fair and orderly marketing of fruits and vegetables in the state of Washington by establishing uniform grades and standards and by providing for the inspection of these products. This chapter is vital to protecting the national and international reputation of fruit and vegetable products grown and shipped from this state and protecting consumers from the sale of inferior and misrepresented fruits and vegetables. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the immediate and future health, safety, and general welfare of the citizens of this state. [1998 c 154 § 1; 1963 c 122 § 1.]

15.17.020 Definitions. For the purpose of this chapter:

(1) "Agent" means broker, commission merchant, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(2) "Certification" means, but is not limited to, the issuance by the director of an inspection certificate or other official document stating the grade, classification, and/or condition of any fruits or vegetables, and/or if the fruits or vegetables are free of plant pests and/or other defects.

(3) "Combination grade" means two or more grades packed together as one, except cull grades, with a minimum percent of the product of the higher grade, as established by rule.

(4) "Compliance agreement" means an agreement entered into between the department and a shipper or packer, that authorizes the shipper or packer to issue certificates of compliance for fruits and vegetables.

(5) "Container" means any container or subcontainer used to prepackage any fruits or vegetables. This does not include a container used by a retailer to package fruits or vegetables sold from a bulk display to a consumer.

(6) "Deceptive arrangement or display" means any bulk lot or load, arrangement, or display of fruits or vegetables which has in the exposed surface, fruits or vegetables which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of the bulk lot or load, arrangement, or display.

(7) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface fruits or vegetables which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of fruits or vegetables whose size is not an accurate representation of the variation of the size of the fruits or vegetables in the entire container, even though the fruits or vegetables in the container are virtually uniform in size or comply with the specific standards adopted under this chapter.

(8) "Department" means the department of agriculture of the state of Washington.

(9) "Director" means the director of the department or his or her duly authorized representative.

(10) "District manager" means a person representing the director in charge of overall operation of a fruit and vegetable inspection district established under RCW 15.17.230.

(11) "Facility" means, but is not limited to, the premises where fruits and vegetables are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport fruits and vegetables.

(12) "Fruits and vegetables" means any unprocessed fruits or vegetables.

(13) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing fruits or vegetables that he or she has purchased or acquired from a producer.

(14) "Inspection" means, but is not limited to, the inspection by the director of any fruits or vegetables at any time prior to, during, or subsequent to harvest.

(15) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any wrapper, container, container label or lining, or any placard used in connection with and having reference to fruits or vegetables.

(16) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof.

(17) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(18) "Sell" means to sell, offer for sale, hold for sale, or ship or transport in bulk or in containers.

(19) "Standards" means grades, classifications, and other inspection criteria for fruits and vegetables. [1998 c 154 § 2; 1996 c 188 § 1; 1963 c 122 § 2.]

15.17.030 Enforcement—Director's duties—Rules.

(1) The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The director shall, whenever he or she considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers or other industry associations, or other persons affected by such rules or amendments. [1998 c 154 § 3; 1963 c 122 § 3.]

15.17.050 Rules—Authority of director. (1) The director shall adopt rules providing standards for apples, apricots, Italian prunes, peaches, sweet cherries, pears, potatoes, and asparagus and may adopt rules providing standards for any other fruit or vegetable. When establishing these standards, the director shall consider the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury and other factors important to marketing.

(2) The director shall adopt rules providing for mandatory inspection of apples, apricots, Italian prunes, peaches, sweet cherries, pears, and asparagus and may adopt rules providing for mandatory inspection of any other fruit or vegetable.

(3) The director may adopt rules:

(a) Fixing the sizes and dimensions of containers to be used for the packing or handling of any fruits or vegetables; and

(b) Establishing combination grades for fruits and vegetables. The standards for combination grades shall, by percentage quantities, include two or more of the grades provided for under this chapter. [1998 c 154 § 4; (2004 c 211 § 1 expired December 31, 2009); 1963 c 122 § 5.]

Expiration date—2004 c 211 § 1: "Section 1 of this act expires December 31, 2009." [2007 c 237 § 1; 2005 c 234 § 1; 2004 c 211 § 2.]

Effective date—2004 c 211: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2004]." [2004 c 211 § 3.]

15.17.060 Adoption of standards. The director may adopt any United States or other state's standard for any fruits and vegetables, if that standard is determined by the director to be substantially equivalent to or better than the standard adopted under this chapter. [1998 c 154 § 5; 1963 c 122 § 6.]

15.17.080 Fresh fruits—Culls—Basket markings—Designation on bills of lading, invoices, etc. It is unlawful for any person to sell for fresh consumption any fresh fruits classified as culls under the provisions of this chapter or rules adopted hereunder unless such fruit is packed in one-half bushel or one bushel wooden baskets ring faced, with the fruit in the ring face representative of the size and quality of the fruit in such baskets. The baskets shall be lidded and the words "cull" including the kind of fruit and variety must appear on the top and side of each basket and on any label in

clear and legible letters at least two and one-half inches high. Every bill of lading, invoice, memorandum, and document referring to the fruit shall designate them as culls. [1998 c 154 § 6; 1963 c 122 § 8.]

15.17.090 Private grades or brands—Approval and registration. The director may approve and register a private grade or brand for any fruit or vegetable. The private grade or brand shall not be lower than the second grade and/or classification established under the provisions of this chapter or rules adopted under this chapter for the fruit or vegetable. [1998 c 154 § 7; 1963 c 122 § 9.]

15.17.140 Inspections and certifications—Request for—Fees. (1) Any person financially interested in any fruits or vegetables in this state may request inspection and/or certification services provided for those fruits or vegetables under this chapter.

(2) To facilitate the movement or sale of fruits and vegetables or other agricultural commodities, the director may provide, if requested by growers or other interested persons, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service.

(3) Persons requesting services shall be responsible for payment of fees for those services prescribed by the director under RCW 15.17.150. [1998 c 154 § 9; 1963 c 122 § 14.]

15.17.143 Certificates of compliance—Petition by shipper—Rules. Any shipper or packer of apples, apricots, cherries, pears, peaches, Italian prunes, potatoes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting this authority, on terms and conditions defined by rule. Certificates of compliance shall only be issued for fruits or vegetables that are in full compliance with this chapter and the rules adopted under this chapter. [1998 c 154 § 20.]

15.17.150 Inspections and certifications—Fees adopted by rule—Failure to pay. The director shall adopt rules establishing the necessary fees to recover the costs of providing inspection and/or certification or other requested services.

(1) The fees are due and payable upon billing.

(2) A late fee of one and one-half percent per month on the unpaid balance shall be assessed against persons more than thirty days in arrears.

(3) In addition to other penalties, the director may refuse to perform any inspection or certification service provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(4) The director may refuse to perform inspection or certification service for any person who has failed to pay assessments required by law to any agricultural commodity commission. [1998 c 154 § 10; 1963 c 122 § 15.]

15.17.170 Inspection certificate or other official document as evidence. Every inspection certificate or other official document issued by the director under the provisions of this chapter shall be received in all the courts of the state as

prima facie evidence of the statements therein. [1998 c 154 § 11; 1963 c 122 § 17.]

15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants. The director may enter during business hours and inspect any facility where any fruits or vegetables are processed, stored, packed, delivered for shipment, loaded, shipped, being transported, or sold, and may inspect all fruits or vegetables and the containers and the equipment in that facility. The director may take for inspection representative samples of fruits or vegetables and containers as may be necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility. The court may upon such application issue a search warrant for the purpose requested. [1998 c 154 § 12; 1963 c 122 § 19.]

15.17.200 Noncomplying fruits or vegetables—Enforcement procedure—Notice—Hearing. (1) For the purposes of this section, "lot" means any lot or any part of a lot.

(2) When the director determines that any lot of fruits or vegetables fails to comply with the requirements of this chapter, the director may issue a hold order prohibiting the sale or movement of that lot except under conditions that may be prescribed.

(3)(a) Written notice of the hold order must be provided to the person in possession of the lot of fruits or vegetables and a tag may be affixed to the lot or its containers. It is unlawful for any person except the director to alter, deface, or remove the tag or notice or to move or allow the lot of fruits or vegetables to be moved except under the conditions prescribed on the tag or notice.

(b) The notice shall include:

(i) A description of the lot that is in noncompliance;

(ii) The location of the lot;

(iii) The reason that the hold order is placed on the lot;

(iv) Any reconditioning, other corrective measures, or diversion to processing that may be required to release the lot for sale;

(v) Time frames to affect the reconditioning or other corrective measures; and

(vi) A reference to the violation of this chapter that provides the basis for the hold order.

(c) Any corrective measures required by the notice pursuant to (b)(iv) of this subsection and the costs associated therewith are the sole responsibility of the person holding the fruits or vegetables for sale.

(4) Upon issuance of a hold order by the director under this section, the seller or holder of the fruits or vegetables may request a hearing. The request for hearing must be in writing and filed with the director. Any hearing shall be held in conformance with RCW 34.05.422 and 34.05.479. [1998 c 154 § 13; 1987 c 202 § 172; 1963 c 122 § 20.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.17.210 Fruits or vegetables—Unlawful practices when selling, offering for sale, or shipping—Containers—Director's powers—Rules. It is unlawful:

(1) To sell any fruits or vegetables:

(a) As meeting the standards for any fruit or vegetable as prescribed by the director unless they in fact do so;

(b) For which no standards have been established under this chapter unless ninety percent or more by weight or count, as determined by the director, are free from plant pest injury that has penetrated or damaged the edible portions and from worms, mold, slime, or decay;

(c) In containers other than the size and dimensions prescribed by the director by rule;

(d) Unless the containers in which the fruits or vegetables are placed or packed are marked with the proper grade and additional information as may be prescribed by rule. The additional information may include:

(i) The name and address of the grower, or packer, or distributor;

(ii) The varieties of the fruits or vegetables;

(iii) The size, weight, and either volume or count, or both, of the fruits or vegetables;

(e) Which are in containers marked or advertised for sale or sold as being either graded or classified, or both, according to the standards prescribed by the director by rule unless the fruits or vegetables conform with the standards;

(f) Which are deceptively packed;

(g) Which are deceptively arranged or displayed;

(h) Which are mislabeled; or

(i) Which do not conform to this chapter or rules adopted under this chapter;

(2) For any person to ship or transport or any carrier to accept any lot of fruits or vegetables without an inspection certificate, permit, or certificate of compliance when the director has prescribed by rule that such products be accompanied by an inspection certificate, permit, or certificate of compliance. The inspection certificate, permit, or certificate of compliance shall be on a form prescribed by the director and may include methods of denoting that all assessments provided for by law have been paid before the fruits or vegetables may lawfully be delivered or accepted for shipment;

(3) For any person to refuse to submit any container, load, or display of fruits or vegetables for inspection by the director, or refuse to stop any vehicle or equipment containing such products for the purpose of inspection by the director;

(4) For any person to move any fruits or vegetables or their containers to which any tag has been affixed, except as provided in RCW 15.17.200; or

(5) After October 1st of any calendar year, for any person to sell containers of apples, containing apples harvested in a prior calendar year, to any retailer or wholesaler for the purpose of resale to the public for fresh consumption. [2002 c 316 § 1; 1998 c 154 § 14; 1994 c 67 § 2; 1963 c 122 § 21.]

15.17.213 Exemption of certain fruits or vegetables from chapter. (1) This chapter does not apply:

(a) To the movement in bulk of any fruits or vegetables from the premises where they are grown or produced to a packing shed, warehouse, or processing plant for the purpose of storing, grading, packing, labeling, or processing prior to entering commercial channels for wholesale or retail sale;

(b) To any processed, canned, frozen, or dehydrated fruits or vegetables;

(2012 Ed.)

(c) To any infected or infested fruits or vegetables to be manufactured into by-products or to be shipped to a by-products plant; or

(d) To the sale of up to five hundred pounds per day of any fruit or vegetable by any producer or handler directly to an individual ultimate consumer unless otherwise established by rule for an individual commodity. These fruits and vegetables shall meet the requirements of RCW 15.17.210(1)(b).

(2) The inspection requirements of this chapter do not apply to the sale or transportation within a zone of production, as defined by rule, of any fruit or vegetable named in RCW 15.17.050(1) or any combination of those fruits and vegetables to a fruit or produce stand or farmers market in a quantity specified by the director by rule. [1998 c 154 § 8; 1963 c 122 § 13. Formerly RCW 15.17.130.]

15.17.230 Fruit and vegetable inspection districts.

For the purpose of this chapter the state shall be divided into not less than two fruit and vegetable inspection districts. The director, by rule, shall establish the boundaries of the districts and may adjust the boundaries for purposes of efficiency and economy. [2002 c 322 § 1; 1998 c 154 § 15; 1986 c 203 § 2; 1975 1st ex.s. c 7 § 1; 1969 ex.s. c 76 § 2; 1963 c 122 § 23.]

Effective date—2002 c 322: See note following RCW 15.17.240.

Additional notes found at www.leg.wa.gov

15.17.240 Fruit and vegetable inspection account—District subaccounts—Fees—Rules.

(1) The fruit and vegetable inspection account is created in the custody of the state treasurer. All fees collected under this chapter must be deposited into the account. The director may authorize expenditures from the account solely for the implementation and enforcement of this chapter and any other expenditures authorized by statute or session law and applying specifically to the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

The director shall establish and maintain an account within the fruit and vegetable inspection account for each district established under RCW 15.17.230.

(2) By August 1, 2004, and by August 1st of each even-numbered year thereafter, the director shall review the balance of each of the district accounts in the fruit and vegetable inspection account at the end of the previous fiscal year. If the balance in the district account exceeds the sum of the following: An amount equal to the total expenditures of the district served by that account for the last six months of that previous fiscal year; any budgeted capital expenditures from the account for the current fiscal year; and six hundred thousand dollars, the director shall temporarily and equally, on a percentage basis, reduce each of the fees accruing to the district account until such time that the district account has a balance equal to the amount of the total expenditures from the account for the last seven months of the previous fiscal year, at which time the fees shall be returned to the amounts before the temporary reduction. In making the reductions, the director shall attempt to reduce fees for a twelve-month period so as to apply the reductions to as many of the persons who annually pay fees for services provided by the district. The temporary fee reductions shall be initially provided through the adoption of emergency rules. The emergency and subse-

quent rules temporarily reducing the fees are exempt from the requirements of RCW 34.05.310 and chapter 19.85 RCW. These fees shall be reinstated through the expiration of the rules temporarily reducing them and the authority to reinstate them is hereby granted. [2002 c 322 § 2; 1998 c 154 § 16; 1975 c 40 § 3; 1963 c 122 § 24.]

Effective date—2002 c 322: "This act takes effect July 1, 2002. However, the director of the department of agriculture and the state treasurer may take actions before July 1, 2002, to permit the creation of the fruit and vegetable inspection account and the district accounts described in RCW 15.17.240 by July 1, 2002." [2002 c 322 § 8.]

15.17.247 District two—Transfer of funds—Control of *Rhagoletis pomonella*. (Expires July 1, 2013.) (1) The district manager for district two as defined in WAC 16-390-010 is authorized to transfer one hundred fifty thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of money must occur by September 1, 2009. On June 30, 2013, any unexpended portion of the one hundred fifty thousand dollars must be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county.

(2) This section expires July 1, 2013. [2009 c 208 § 1.]

15.17.260 Injunctions. The director may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to this chapter in the superior court of Thurston county or of any county in which such violation occurs, notwithstanding the existence of other remedies at law. [1998 c 154 § 17; 1963 c 122 § 26.]

15.17.270 Cooperation with governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1963 c 122 § 31.]

15.17.290 Violation of chapter or rules—Suspension—Civil penalty. Any person who violates this chapter or rules adopted under this chapter may be subject to:

(1) Suspension of any compliance agreement under this chapter to which the person is a party for a period not to exceed twelve consecutive months; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. [1998 c 154 § 18; 1963 c 122 § 30.]

15.17.900 Provisions cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1963 c 122 § 27.]

15.17.940 Severability—1963 c 122. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 122 § 33.]

Chapter 15.19 RCW GINSENG

Sections

15.19.010	Definitions.
15.19.020	Enforcement of chapter.
15.19.030	Adoption of rules.
15.19.040	Fees established by rule—Deposit—Use—Failure to pay.
15.19.050	Inspection of facility—Entry—Samples—Search warrant.
15.19.060	Injunctions.
15.19.070	Cooperative agency agreements.
15.19.080	Public disclosure of information—Exemption.
15.19.090	Violations of chapter or rules—Unlawful.
15.19.100	Violations of chapter or rules—Penalties.
15.19.110	Remedies.
15.19.900	Severability—1998 c 154.

15.19.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly authorized representative.

(3) "Facility" means, but is not limited to, the premises where ginseng is grown, stored, dried, handled, or delivered for sale or transportation, or where records required by rule under this chapter are stored or kept, and all vehicles and equipment, whether aerial or surface, used to transport ginseng.

(4) "Grower" means a person who grows cultivated, wild simulated, and/or woodsgrown American ginseng and sells it to a dealer.

(5) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof. [1998 c 154 § 21.]

15.19.020 Enforcement of chapter. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. [1998 c 154 § 22.]

15.19.030 Adoption of rules. In addition to the powers conferred on the director under this chapter, the director has the power to adopt rules:

(1) Establishing certification requirements for American ginseng (*Panax quinquefolius* L.).

Certification factors include:

- (a) Place of origin;
- (b) Whether the ginseng is wild or cultivated;
- (c) Weight; and
- (d) Date of harvest;

and may include whether the ginseng meets requirements for freedom from infestation by plant pests as required by the importing country;

(2) Requiring the registration of ginseng growers and of dealers who purchase and/or sell American ginseng for the purpose of foreign export; and

(3) Requiring that records be maintained by ginseng growers and by dealers who purchase or sell American ginseng for the purpose of foreign export.

The director may adopt any other rules necessary to comply with the requirements of the convention on international trade in endangered species of wild fauna and flora (27 U.S.T. 108); the endangered species act of 1973, as amended

(16 U.S.C. Sec. 1531 et seq.); and 50 C.F.R. Part 23 (1995), as they existed on June 6, 1996, or a subsequent date as may be provided by rule, consistent with the purposes of this section. [1998 c 154 § 23.]

15.19.040 Fees established by rule—Deposit—Use—Failure to pay. (1) The director shall adopt rules establishing fees to recover the costs of providing ginseng certification activities authorized under this chapter. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out the purposes of this chapter and rules adopted under this chapter.

(2) In addition to other penalties, the director may refuse to perform any inspection or certification service authorized under this chapter for any person in arrears unless the person makes payment in full prior to performing the service. [1998 c 154 § 24.]

15.19.050 Inspection of facility—Entry—Samples—Search warrant. The director may enter at reasonable times as determined by the director and inspect any facility and any records required under this chapter. The director may take for inspection those representative samples of ginseng necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility or records, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility or records. The court may upon such application issue a search warrant for the purpose requested. [1998 c 154 § 25.]

15.19.060 Injunctions. The director may bring an action to enjoin any violation of this chapter or rule adopted under this chapter in the superior court of Thurston county or of any county in which a violation occurs, notwithstanding the existence of other remedies at law. [1998 c 154 § 26.]

15.19.070 Cooperative agency agreements. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1998 c 154 § 27.]

15.19.080 Public disclosure of information—Exemption. The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.56 RCW. [2005 c 274 § 211; 1998 c 154 § 28.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

15.19.090 Violations of chapter or rules—Unlawful. It is unlawful for a person to sell, offer for sale, hold for sale, or ship or transport American ginseng for foreign export in violation of this chapter or rules adopted under this chapter. [1998 c 154 § 29.]

(2012 Ed.)

15.19.100 Violations of chapter or rules—Penalties. Any person who violates the provisions of this chapter or rules adopted under this chapter may be subject to:

(1) A civil penalty in an amount of not more than one thousand dollars for each violation; and/or

(2) Denial, revocation, or suspension of any registration or application for registration issued under this chapter. Upon notice by the director to deny, revoke, or suspend a registration or application for registration, a person may request a hearing under chapter 34.05 RCW. [1998 c 154 § 30.]

15.19.110 Remedies. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy. [1998 c 154 § 31.]

15.19.900 Severability—1998 c 154. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 154 § 32.]

Chapter 15.21 RCW WASHINGTON FRESH FRUIT SALES LIMITATION ACT

Sections

15.21.010	Declaration of purpose.
15.21.020	Unlawful practices.
15.21.030	Cost.
15.21.040	Combination sales.
15.21.050	Injunction.
15.21.060	Penalties.
15.21.070	Exempt sales.
15.21.900	Chapter cumulative.
15.21.910	Short title.
15.21.920	Severability—1965 c 61.

15.21.010 Declaration of purpose. Limitations or restrictions placed on the buyer by the seller offering fresh fruit for sale as to the amount that such prospective buyer may purchase of the total amount of such fresh fruit owned, possessed or controlled by the seller, may lead to or cause confusion, deceptive trade practices, and interfere with the orderly marketing of fresh fruit necessary for the public health and welfare, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the general health and welfare of the people of this state. [1965 c 61 § 1.]

15.21.020 Unlawful practices. It shall be unlawful to cause a limitation to be placed on the amount of fresh fruit that a purchaser may buy at retail or wholesale when such fresh fruit is offered for sale, through any media, below cost to the seller. The foregoing shall apply to all such fresh fruit offered for sale below cost and owned, possessed or controlled by such seller. [1965 c 61 § 2.]

15.21.030 Cost. Cost for the purpose of this chapter, shall be that price paid for fresh fruit by the seller or the actual replacement cost for such fresh fruit: PROVIDED, That the delivered invoice price to such seller shall be prima facie evidence of the price paid for such fresh fruit by the seller. [1965 c 61 § 3.]

15.21.040 Combination sales. When one or more items are offered for sale or sold with one or more items at a combined price, or offered individually or as a package or a unit to be given with the sale of one or more items, each and all such items shall for the purpose of this chapter be deemed to be offered for sale, and as to such transaction the cost basis shall be the combined cost basis of all such items as determined pursuant to RCW 15.21.030. [1965 c 61 § 4.]

15.21.050 Injunction. Any person, prosecuting attorney, or the attorney general may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the superior court in the county where such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1965 c 61 § 5.]

15.21.060 Penalties. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 103; 1965 c 61 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.21.070 Exempt sales. The provisions of this chapter shall not apply to the following sales at retail or sales at wholesale:

(1) When fresh fruit is sold for charitable purposes or to relief agencies;

(2) When fresh fruit is sold on contract to departments of the government or governmental institutions;

(3) When fresh fruit is sold by any officer acting under the order or direction of any court. [1965 c 61 § 7.]

15.21.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 c 61 § 8.]

15.21.910 Short title. This chapter may be cited as the Washington fresh fruit sales limitation act. [1965 c 61 § 9.]

15.21.920 Severability—1965 c 61. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 61 § 10.]

Chapter 15.24 RCW

WASHINGTON APPLE COMMISSION

(Formerly: Apple advertising commission)

Sections

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15.24.015	Commission—Purpose.
15.24.020	Commission created—Generally.
15.24.030	Members—Appointment—Terms—District representation—Meetings.
15.24.033	Members—Transition to appointed commission—Appointments by director.
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15.24.120	Records kept by dealers, handlers, processors.
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15.24.808	Expenditure of bond proceeds.
15.24.810	Fund for payment of bond principal and interest.
15.24.812	Certification and payment of bond principal and interest.
15.24.814	RCW 15.24.810 and 15.24.812 not exclusive method of payment.
15.24.816	Bonds constitute legal investments for state and other public funds.
15.24.818	Bonds to be issued only after certification of sufficiency of funds.
15.24.900	Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws.
15.24.910	Liberal construction.
15.24.920	Severability—1967 c 240.
15.24.921	Severability—2004 c 178.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.

15.24.010 Definitions.

(1) "Commission" means the Washington apple commission;

(2) "Ship" means to load apples into a conveyance for transport, except apples being moved from the orchard where grown to a packing house or warehouse within the immediate area of production;

(3) "Handler" means any person who ships or initiates a shipping operation, whether for himself, herself, or for another;

(4) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;

(5) "Processor" and "processing plant" means every person to whom and every place to which apples are delivered for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(6) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article. However,

"processing apples" does not include fresh apples sliced or cut for raw consumption;

(7) "Fresh apples" means all apples other than processing apples;

(8) "Director" means the director of the department of agriculture or his or her duly authorized representative;

(9) "Grower district No. 1" includes the counties of Chelan, Okanogan, and Douglas;

(10) "Grower district No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;

(11) "Grower district No. 3" includes all counties in the state not included in the first and second districts;

(12) "Dealer district No. 1" includes the area of the state north of Interstate 90;

(13) "Dealer district No. 2" includes the area of the state south of Interstate 90; and

(14) "Executive officer" includes, but is not limited to, the principal management executive, sales manager, general manager, or other executive employee of similar responsibility and authority. [2002 c 313 § 115; 1989 c 354 § 53; 1967 c 240 § 22; 1963 c 145 § 1; 1961 c 11 § 15.24.010. Prior: 1937 c 195 § 2; RRS § 2874-2.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.015 Commission—Purpose. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to apples and apple-related issues. [2004 c 178 § 1.]

15.24.020 Commission created—Generally. There is hereby created a Washington apple commission to be thus known and designated. The commission shall be composed of nine practical apple producers and four practical apple dealers. In addition, the director shall be a full voting member of the commission and may in his or her place appoint any other employee of the department of agriculture as a designee to attend commission meetings and otherwise represent the director and exercise the director's vote.

The nine producer members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, currently operates a commercial producing orchard in the district represented, and has during that period derived a substantial portion of his or her income therefrom. The four dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state, and are engaged as apple dealers in the district represented. The qualifications of members of the commission as herein set forth must continue during their term of office. A person who meets the qualifications of both a producer and a dealer as set forth in this section may serve as either a producer member or a dealer member. [2004 c 178 § 2; 2002 c 313 § 116; 1989 c

354 § 54; 1967 c 240 § 23; 1963 c 145 § 2; 1961 c 11 § 15.24.020. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.030 Members—Appointment—Terms—District representation—Meetings. Thirteen persons, not including the director or the director's representative, with the qualifications stated in RCW 15.24.020 shall be members of the commission. Nine of the members shall be producer members, and four shall be dealer members. The number of producer members to be appointed from each grower district shall be determined in accordance with the relative acreages of planted commercial apple orchards within the various districts as of July 1, 2003, according to the most recent census of acreages published by the United States department of agriculture, agricultural statistics service. The number of producer members to be appointed from each of the grower districts shall be subject to readjustment every ten years thereafter in accordance with the then most recent census of acreages of planted commercial apple orchards published by the United States department of agriculture, agricultural statistics service. In the event the information from the United States department of agriculture's agricultural statistics service is not published with respect to the specifically defined districts, the commission shall adopt rules to establish equitable apportionment based on the available information. However, at all times at least two producer members shall be from district 1, one of which shall be from Okanogan county; district 2 shall never have fewer than two producer members; and district 3 shall never have fewer than one producer member. The commission shall adopt rules to effect the efficient transition of reapportioned positions.

The regular term of office of the members of the commission shall be three years from March 1 following their appointment by the director and until their successors are appointed. The commission shall hold its annual meeting during the month of March each year and shall hold such other meetings during the year as it shall determine. The first commission meeting that takes place after June 10, 2004, shall be held in Wenatchee, and subsequent commission meetings shall alternate between Yakima and Wenatchee. [2004 c 178 § 3; 1989 c 354 § 55; 1967 c 240 § 24; 1963 c 145 § 3; 1961 c 11 § 15.24.030. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Additional notes found at www.leg.wa.gov

15.24.033 Members—Transition to appointed commission—Appointments by director. To accomplish the transition to a commission structure as set forth in RCW 15.24.030, the names of the currently elected commission members shall be forwarded to the director for appointment within thirty days of June 10, 2004, for appointment for the remainder of their current terms. Thereafter, the director shall appoint commission members pursuant to the commission structure set forth in RCW 15.24.030 as the current commission member terms expire. As part of the transition, in order to achieve proper representation of producer members relative to planted acreages, as each current producer position expires the director shall appoint a replacement producer

member from the district then most underrepresented until the initial balance of representation is achieved. Notwithstanding other provisions of this chapter, nominations for transitioning positions required for underrepresented districts shall be made from the district to be represented by the new commission member. Thereafter, reallocations shall be accomplished as provided in RCW 15.24.030. [2004 c 178 § 4.]

15.24.035 Members—Appointments by director—Advisory ballot. (1) The director shall appoint the members of the commission.

(2) Candidates for positions on the commission shall be nominated to the director in accordance with subsection (3) of this section.

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the commission shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers for producer positions and to affected dealers for dealer positions and shall be returned to the commission not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event only two candidates are nominated for a position, an advisory vote need not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a position, the director has the discretion to appoint or reject the candidate.

(4) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select any candidate for the position or may reject all candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director. [2008 c 11 § 1; 2004 c 178 § 5.]

15.24.040 Members—Nominations to the advisory ballot. The commission shall call a meeting of apple growers, and meetings of apple dealers in dealer district No. 1 and dealer district No. 2 for the purpose of nominating to the advisory ballot for nomination to the director their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. The meetings shall be held each year and insofar as practicable, the meetings of the growers shall be held at the same time and place as the annual meeting of the Washington state horticultural association, or the annual meeting of any other producer organization which represents a majority of the state's apple producers, as determined by the commission, but not while the same is in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: PROVIDED, That nonreceipt of the notice by any interested person shall not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the respective meetings. Nominations may also be made within five days after any

such meeting by written petition filed in the office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing within the district or within the subdivision if the nomination is made from a subdivision.

Nominees to be forwarded to the director for appointment to producer positions on the commission shall be selected by a majority of the votes cast by the apple growers in the respective districts. Each grower who operates a commercial producing apple orchard within the district being represented, whether an individual proprietor, partnership, joint venture, or corporation, is entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he or she is also a member of a partnership or corporation which votes for other apple acreage. Nominees to be forwarded to the director for appointment to dealer positions on the commission shall be selected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. [2008 c 11 § 2; 2004 c 178 § 6; 2002 c 313 § 117; 1989 c 354 § 56; 1967 c 240 § 25; 1963 c 145 § 4; 1961 c 11 § 15.24.040. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.045 Members—Removal from commission—Process. If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, the commission may recommend to the director that the commission member be removed from his or her position on the commission. Upon receiving such recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position shall then be declared vacant and must be filled pursuant to the provisions of this chapter for filling vacancies. [2008 c 11 § 3.]

15.24.050 Vacancies—Quorum—Compensation—Travel expenses. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position shall be filled for the balance of the unexpired term by appointment by the director from at least two nominees submitted by the remaining members of the commission.

A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when on official commission business. [2004 c 178 § 7; 2002 c 313 § 118;

1984 c 287 § 12; 1975-'76 2nd ex.s. c 34 § 12; 1967 c 240 § 26; 1961 c 11 § 15.24.050. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.24.060 Commission records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1961 c 11 § 15.24.060. Prior: 1937 c 195 § 4, part; RRS § 2874-4, part.]

15.24.065 Plans, programs, and projects—Approval by director. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects within the commission's powers and duties;

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of apples may be encouraged, expanded, improved, or made more efficient; and

(c) The establishment and effectuation of, and/or support of industry organizations work regarding, market access project and programs, trade banner work and industry organization support.

(2) The director shall review the commission's programs to ensure that they properly benefit the people of the state of Washington and its economy and properly speak the message of the state.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its project and program plans and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2004 c 178 § 8.]

15.24.070 Powers and duties—Agency of state government. The Washington apple commission is hereby declared and created an agency of the Washington state government. The powers and duties of the commission shall include the following:

(1) To elect a chair and such other officers as it deems advisable; and to adopt, rescind, and amend rules and orders for the exercise of its powers under this chapter, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter. Expenses may include reasonable, prudent use of promotional hosting to benefit the purposes of this chapter;

(5) To investigate and prosecute violations of this chapter;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and apple products;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued and have all of the powers of an agency;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(10) To borrow money and incur indebtedness;

(11) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations on any appropriate activity of the commission except as limited by the donor's terms. The commission shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises. The authority to make expenditures granted by this subsection includes the authority to make expenditures to provide scholarships or financial assistance to persons as defined in RCW 1.16.080 or entities associated with the apple industry, but is not limited to the authority to make expenditures for such a purpose;

(12) To engage in appropriate fund-raising activities for the purpose of supporting the activities of the commission authorized by this chapter;

(13) To retain, discharge, or contract with, at its pleasure, accountants, marketing agencies, and other professional consultants as necessary, under procedures for hiring, discharging, and review as adopted by the commission;

(14) To maintain, protect, acquire, or own intellectual property rights, including without limitation, licenses, trademarks, copyrights, artwork, or patents and to sell or license any or all of such rights and collect royalties therefrom and from commission-funded research related to apples;

(15) To apply for and administer federal market access programs and/or similar programs or projects and provide matching funds as may be necessary;

(16) With oversight by the director, provide funding and support to organizations providing general support and leadership to and representation of the apple industry;

(17) With oversight by the director, to speak on behalf of the Washington state government on a nonexclusive basis with regard to apples and apple-related issues, including but not limited to trade negotiations, market access negotiations, and the like, and to fund industry organizations engaging in such activities;

(18) To fund, conduct, or otherwise participate in scientific research relating to apples, including without limitation research regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship;

(19) To provide services relating to the production, promotion, sale and/or distribution of Washington apples on a fee-for-services basis. However, (a) the product of such services shall belong to the funding party, and (b) the fees for such services shall include a reasonable charge for the commission's overhead expenses as determined by the commission; and

(20) To gather, maintain, and distribute data relating to the production, processing, shipment, and sales of apples, in connection with its ordinary operations and collection of assessments and particularly in connection with services provided on a fee-for-service basis. [2004 c 178 § 9; 2002 c 313 § 119; 1994 c 134 § 1; 1987 c 393 § 3; 1986 c 203 § 3; 1963 c 145 § 5; 1961 c 11 § 15.24.070. Prior: (i) 1937 c 195 § 8; RRS § 2874-8. (ii) 1937 c 195 § 5; RRS § 2874-5. (iii) 1937 c 195 § 4, part; RRS § 2874-4, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.073 Rule-making proceedings—Exemptions.

Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and the provisions of chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum. [2002 c 313 § 125.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.080 Research, advertising, and educational campaign—Beneficial purposes. In order to benefit the people of this state, the state's economy and its general tax revenues, the commission shall provide for and conduct a comprehensive and extensive research, advertising, and educational campaign as continuous as the crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of the markets, and extent to which public convenience and necessity require research and advertising to be conducted. [2002 c 313 § 120; 1961 c 11 § 15.24.080. Prior: 1937 c 195 § 13, part; RRS § 2874-13, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.086 Promotional printing contracts—Contractual conditions of employment. All such printing contracts provided for in this section and *RCW 15.24.085 shall be executed and performed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such provision of any contract shall be ground for cancellation thereof. [1994 c 164 § 1; 1973 1st ex.s. c 154 § 20; 1961 c 11 § 15.24.086. Prior: 1953 c 222 § 2.]

***Reviser's note:** RCW 15.24.085 was repealed by 2011 1st sp.s. c 43 § 306.

Additional notes found at www.leg.wa.gov

15.24.090 Decrease or increase in assessments—Grounds—Procedure—Oversight by director. If it appears from investigation by the director and the commission that the revenue from the assessment levied on fresh

apples under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research or other expenditures, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. With the oversight of the director, and subject to the approval by vote of at least two-thirds for increases, or a majority for decreases, of the producers voting; and approval of voting producers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election, the commission shall thereupon decrease or increase the assessment to a sum determined by the commission to be necessary for those purposes. However, if a different rate is determined for any specific variety or for fresh apples sliced or cut for raw consumption, that different rate must be applied to that variety or those sliced or cut apples. A decrease or an increase becomes effective sixty days after the resolution is adopted or on any other date provided for in the resolution, but shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by at least two-thirds for increases, or a majority for decreases, of the growers voting on it and also be approved by voting growers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election. After the mail ballot, if favorable to the increase or decrease, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase or decrease. [2004 c 178 § 10; 2002 c 313 § 122; 1983 c 95 § 1; 1979 c 20 § 1; 1967 c 240 § 27; 1963 c 145 § 6; 1961 c 11 § 15.24.090. Prior: 1953 c 43 § 1; 1937 c 195 § 13, part; RRS § 2874-13, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.100 Assessments levied—Procedure for eliminating assessment. (1) Subject to subsection (2) of this section, there is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, including fresh sliced, an assessment of eight and seventy-five one-hundredths cents per one hundred pounds of apples, based on net shipping weight, or reasonable equivalent net product assessment measurement as determined by the commission, plus such annual decreases or increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter.

(2) No sooner than five years from June 10, 2004, a petition may be filed with the commission to reduce the assessment authorized in this section to zero. To be valid, the petition must be signed by at least eight percent of all apple growers eligible to vote in commission referendum elections. The petition shall contain the name of a person designated to represent the petitioners.

(a) Upon receipt of a valid petition, the commission shall prepare a document discussing the substance of the petition. A statement in favor of the petition shall be written by the proponents of the petition. A statement opposing the petition may be written by the commission or an opponent. The document and a notice of public hearing shall be sent to apple

growers eligible to vote in commission referendum elections at least twenty days prior to the scheduled public hearings. The commission shall hold public hearings in Yakima and Wenatchee on the petition.

(b) Following the public hearings, the question of whether to reduce the assessment authorized in this section to zero shall be referred to a referendum mail ballot. The commission shall certify to the director a list of apple growers eligible to vote in commission referendum elections. The referendum shall be conducted and supervised by the director using the certified list. Inadvertent failure to notify an affected grower does not invalidate a referendum.

(c) The referendum will be approved if a simple majority of apple growers voting in the referendum election vote in favor of the elimination of the assessment. The director will certify the results of the vote.

(d) The referendum vote shall be binding and may not be overturned by action of the commission or director. If the referendum is approved, the commission shall immediately commence activities to wind down its operations. However, the elimination of the assessment shall not be effective until six months from the date the referendum result is certified by the director. If the referendum fails, neither the commission nor the director will take further action on the petition.

(e) The commission is responsible for all its own costs and all the director's costs associated with the hearing, notice, and referendum process. A subsequent petition may not be filed any sooner than five years following the certification of the results of any previously held referendum conducted under this subsection. [2004 c 178 § 11; 2002 c 313 § 123; 1967 c 240 § 28; 1963 c 145 § 7; 1961 c 11 § 15.24.100. Prior: 1937 c 195 § 9; RRS § 2874-9.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.110 Collection of assessments—Due prior to shipment—Stamps—Rule-making exemption—Assessment imposed under RCW 15.26.120. The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, prior to shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule prescribe the method of collection, and for that purpose may require stamps to be known as "Washington apple stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Rule-making procedures conducted under this section are exempt from the provisions of RCW 43.135.055 when adoption of the rule or rules is determined by a referendum vote of the persons taxed under this chapter.

The commission may also collect assessments imposed under RCW 15.26.120, and in that event, the commission shall establish and be reimbursed by the Washington tree fruit research commission an amount representing a reasonable approximation of the actual costs to the commission of such collection. [2004 c 178 § 12; 2002 c 313 § 124; 1967 c 240 § 29; 1961 c 11 § 15.24.110. Prior: 1937 c 195 § 12; RRS § 2874-12.]

(2012 Ed.)

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.120 Records kept by dealers, handlers, processors. Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled, shipped, or processed by him or her. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents. [2010 c 8 § 6021; 1961 c 11 § 15.24.120. Prior: 1937 c 195 § 10; RRS § 2874-10.]

15.24.130 Returns rendered by dealers, handlers, processors. Each dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of apples handled, shipped, or processed by him or her during the period prescribed by the commission. The return shall contain such further information as the commission may require. [2010 c 8 § 6022; 1961 c 11 § 15.24.130. Prior: 1937 c 195 § 11; RRS § 2874-11.]

15.24.140 Right to inspect. The commission may inspect the premises and records of any carrier, handler, dealer, or processor for the purpose of enforcing this chapter and the collection of the excise tax. [1961 c 11 § 15.24.140. Prior: 1937 c 195 § 19; RRS § 2874-19.]

15.24.150 Treasurer—Bond—Duties—Funds. The commission shall appoint a treasurer who shall file with it a fidelity bond executed by a surety company authorized to do business in this state, in favor of the commission and the state, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his or her duties and strict accounting of all funds of the commission.

All money received by the commission, or any other state official from the assessment herein levied, shall be paid to the treasurer, deposited in such banks as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [2010 c 8 § 6023; 1961 c 11 § 15.24.150. Prior: 1937 c 195 § 6; RRS § 2874-6.]

15.24.160 Promotional plans—Purpose—Authority of commission—Limitation on liability. To maintain and complement the existing comprehensive regulatory scheme, the commission may employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission, including but not limited to the director, state agencies such as the Washington state fruit commission and its successors, statewide horticultural associations, organizations or associations engaged in tracking the movement and marketing of horticultural products, and organizations or associations of horticultural growers, for the purpose of promoting the general welfare of the apple industry and particularly for the purpose of assisting in the sale and distribution of apples in domestic or foreign commerce, and expend its funds or such portion thereof as it may deem necessary or advisable for such purpose and for the purpose of paying its

proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of apples in domestic or foreign commerce. For such purposes it may employ and pay for legal counsel and contract and pay for other professional services. The liability of the state for the acts of the commission, or upon its contracts, shall be limited solely to the assets of the commission. In any civil or criminal action or proceeding for violation of any statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2004 c 178 § 13; 2002 c 313 § 126; 1961 c 11 § 15.24.160. Prior: 1947 c 280 § 3; Rem. Supp. 1947 § 2909-3.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.170 Rules and regulations—Filing—Publication. Rules, regulations, and orders made by the commission shall be filed with the director and published in a legal newspaper in the cities of Wenatchee and Yakima within five days after being made, and shall become effective pursuant to the provisions of RCW 34.05.380. [2002 c 313 § 127; 1975 1st ex.s. c 7 § 37; 1961 c 11 § 15.24.170. Prior: 1937 c 195 § 18; RRS § 2874-18.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.180 Enforcement. All county and state law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.24.180. Prior: 1937 c 195 § 16; RRS § 2874-16.]

15.24.190 Claims enforceable against commission assets—Nonliability of other persons and entities—Exception—Application of chapter 4.92 RCW. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. No such person or employee may be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member is liable for the default of any other member. This provision confirms that commissioners have been, and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW, as provided in that chapter. [2004 c 178 § 14; 1987 c 393 § 4; 1961 c 11 § 15.24.190. Prior: 1937 c 195 § 7; RRS § 2874-7.]

15.24.200 Penalties. (1) Any person who violates or aids in the violation of any provision of this chapter is guilty of a gross misdemeanor.

(2) Any person who violates or aids in the violation of any rule or regulation of the commission is guilty of a misdemeanor. [2003 c 53 § 104; 1961 c 11 § 15.24.200. Prior: 1937 c 195 § 14; RRS § 2874-14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.24.210 Prosecutions. Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules and regulations of the commission issued hereunder, and to prevent and restrain violations thereof. [2010 c 8 § 6024; 1961 c 11 § 15.24.210. Prior: 1937 c 195 § 15; RRS § 2874-15.]

15.24.215 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 72.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.800 Financing assistance for commission building. The legislature hereby finds that, in order to permit the Washington apple commission to accomplish more efficiently its important public purposes, as enumerated in chapter 15.24 RCW, it is necessary for the state to assist in financing a new building for the commission, to be located on Euclid Avenue in Chelan county, and housing commission offices, warehouse space, and a display room. The state's assistance shall augment approximately five hundred thousand dollars in commission funds which will be applied directly to the payment of the costs of this project. The state's assistance shall be in the amount of eight hundred thousand dollars, or so much thereof as may be required, to be provided from the proceeds from the sale and issuance of general obligation bonds of the state, the principal of and interest on which shall be reimbursed to the state treasury by the commission from revenues derived from the assessments levied pursuant to chapter 15.24 RCW and other sources. [2002 c 313 § 128; 1987 c 6 § 1.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.802 General obligation bonds to fund commission building. For the purpose of providing part of the funds necessary for the Washington apple commission to undertake a capital project consisting of the land acquisition for, and the design, construction, furnishing, and equipping of, the building described in RCW 15.24.800, and to pay the administrative costs of such project, including costs of bond issuance

and retirement, salaries and related costs of officials and employees of the state, and other expenses incidental to the administration of such project, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight hundred thousand dollars, or so much thereof as may be required. [2002 c 313 § 129; 1987 c 6 § 2.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.804 Bond issuance and sale. The bonds authorized in RCW 15.24.802 shall be issued and sold in accordance with the provisions of chapter 39.42 RCW. [1987 c 6 § 3.]

Additional notes found at www.leg.wa.gov

15.24.806 Bond proceeds, etc., to state building construction account. The proceeds from the sale of the bonds authorized in RCW 15.24.802, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the Washington apple commission may direct the state treasurer to deposit therein, shall be deposited in the state building construction account in the state treasury. [2002 c 313 § 130; 1987 c 6 § 4.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.808 Expenditure of bond proceeds. Subject to legislative appropriation, all proceeds from the sale of the bonds authorized in RCW 15.24.802 shall be administered and expended by the Washington apple commission exclusively for the purposes specified in RCW 15.24.802. [2002 c 313 § 131; 1987 c 6 § 5.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.810 Fund for payment of bond principal and interest. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized to be issued under RCW 15.24.802. The state finance committee may provide for the creation of one or more separate accounts in such fund to facilitate payment of such principal and interest.

On or before June 30 of each year, the state finance committee shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest on such bonds coming due in accordance with the provisions of the bond proceedings. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, the amount certified by the state finance committee to be due on the payment date. [1987 c 6 § 6.]

Additional notes found at www.leg.wa.gov

15.24.812 Certification and payment of bond principal and interest. On or before June 30 of each year, the state finance committee shall certify to the Washington apple com-

mission the principal and interest payments determined under RCW 15.24.810, exclusive of deposit interest credit, attributable to the bonds issued under RCW 15.24.802. On each date on which any interest or principal and interest payment is due, the commission shall cause the amount certified by the state finance committee to be due on such date to be paid out of the commission's general fund to the state treasurer for deposit into the general fund of the state treasury. [2002 c 313 § 132; 1987 c 6 § 7.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.814 RCW 15.24.810 and 15.24.812 not exclusive method of payment. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 15.24.802, and RCW 15.24.810 and 15.24.812 shall not be deemed to provide an exclusive method for the payment of such principal and interest. [1987 c 6 § 8.]

Additional notes found at www.leg.wa.gov

15.24.816 Bonds constitute legal investments for state and other public funds. The bonds authorized by RCW 15.24.802 shall constitute legal investments for all state funds or for funds under state control and all funds of any other public body. [1987 c 6 § 9.]

Additional notes found at www.leg.wa.gov

15.24.818 Bonds to be issued only after certification of sufficiency of funds. The bonds authorized by RCW 15.24.802 shall be issued only after the treasurer of the Washington apple commission has certified that the net proceeds of the bonds, together with all money to be made available by the commission for the purposes described in RCW 15.24.802, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to chapter 15.24 RCW and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to meet the requirements of RCW 15.24.812 during the life of the bonds to be issued. [2002 c 313 § 133; 1987 c 6 § 10.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.24.900 Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws. (1) This chapter is passed:

(a) In the exercise of the police power of the state to assure, through this chapter, and other chapters, that the apple industry is highly regulated to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state as a vital and integral part of its economy for the benefit of all its citizens;

(b) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(c) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(d) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(e) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(f) Because the stabilizing and promotion of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure and increase the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(g) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and

(h) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put.

(2) The history, economy, culture, and future of Washington state's agricultural industry involves the apple industry. In order to develop and promote apples and apple products as part of an existing comprehensive scheme to regulate those products, the legislature declares:

(a) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its apple and apple products be properly promoted by establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standards of and for apples and apple products; and by working to stabilize the apple industry and by increasing consumption of apples and apple products within the state, nation, and internationally;

(b) That apple producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(c) That it is in the overriding public interest that support for the apple industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that apples and apple products be promoted individually, as well as part of a comprehensive promotion of the agricultural industry to:

(i) Enhance the reputation and image of Washington state's agricultural industry;

(ii) Increase the sale and use of apples and apple products in local, domestic, and foreign markets;

(iii) Protect the public and consumers by correcting any false or misleading information and by educating the public in reference to the quality, care, and methods used in the production of apples and apple products, and in reference to the various sizes, grades, and varieties of apples and the uses to which each should be put;

(iv) Increase the knowledge of the health-giving qualities and dietetic value of apple products; and

(v) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of apples and apple products;

(d) That the apple industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulation of the industry. Other regulations and restraints applicable to the apple industry include:

(i) Washington agriculture general provisions, chapter 15.04 RCW;

(ii) Pests and diseases, chapter 15.08 RCW;

(iii) Standards of grades and packs, chapter 15.17 RCW;

(iv) Tree fruit research, chapter 15.26 RCW;

(v) Controlled atmosphere storage, chapter 15.30 RCW;

(vi) Higher education in agriculture, chapter 28B.30 RCW;

(vii) Department of agriculture, chapter 43.23 RCW;

(viii) Fertilizers, minerals, and limes under chapter 15.54 RCW;

(ix) Organic products act under chapter 15.86 RCW;

(x) Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;

(xi) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(xii) Planting stock under chapter 15.14 RCW;

(xiii) Washington pesticide control act under chapter 15.58 RCW;

(xiv) Farm marketing under chapter 15.64 RCW;

(xv) Insect pests and plant diseases under chapter 17.24 RCW;

(xvi) Weights and measures under chapter 19.94 RCW;

(xvii) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and

(xviii) The federal insecticide, fungicide, and rodenticide act under 7 U.S.C. Sec. 136; and

(e) That this chapter is in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state. [2011 c 103 § 27; 2002 c 313 § 134; 1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.24.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.24.910. Prior: 1937 c 195 § 17; RRS § 2874-17.]

15.24.920 Severability—1967 c 240. See note following RCW 43.23.010.

15.24.921 Severability—2004 c 178. If any section, subsection, sentence, clause, or part of this act is for any reason held to be invalid or unconstitutional, the judicial deci-

sion does not affect the remainder of this act and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this act was enacted with the intent that if any portion of this act is severed, the remainder of this act is capable of accomplishing its legislative purpose. [2004 c 178 § 16.]

Chapter 15.26 RCW
TREE FRUIT RESEARCH ACT

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15.26.010 Short title. This chapter shall be known and cited as the "tree fruit research act." [1969 c 129 § 1.]

15.26.020 Purpose. The purpose of this chapter is for the creation of a commission which shall promote and carry on research and administer specific industry service programs, including but not limited to sanitation programs, which will or may benefit the planting, production, harvesting, handling, processing or shipment of tree fruit of this state, which shall collect assessments on tree fruit in this state and which shall coordinate its research efforts with those of other state, federal, or private agencies doing similar research. [1983 c 281 § 1; 1969 c 129 § 2.]

15.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree fruit or has orchard plantings intended for commercial tree fruit production.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits. [2010 c 8 § 6025; 1983 c 281 § 2; 1969 c 129 § 3.]

15.26.040 Tree fruit research commission created—Membership. There is hereby created the Washington tree fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the Washington apple commission, and one member representing the winter pear industry to be appointed by the director. The director or his or her duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070. [2010 c 8 § 6026; 1969 c 129 § 4.]

15.26.050 Qualifications of members. Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his or her income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this section shall continue during their term of office. [2010 c 8 § 6027; 1969 c 129 § 5.]

15.26.060 Appointment of members. The Washington apple commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his or her income from the production of winter pears. [2010 c 8 § 6028; 1969 c 129 § 6.]

15.26.070 Terms of members. The terms of the members of commission shall be staggered and each shall serve for a term of three years and until their successor has been

appointed and qualified: PROVIDED, That the first appointments to the commission beginning July 30, 1969, shall be for the following terms:

- (1) Positions one, four, and seven, one year.
- (2) Positions two, five, and eight, two years.
- (3) Positions three, six, and nine, three years. [1969 c 129 § 7.]

15.26.080 Vacancies. In the event a commission member resigns, is disqualified, or vacates his or her position on the commission for any other reason, the appointing agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member. [2010 c 8 § 6029; 1969 c 129 § 8.]

15.26.090 Quorum. A majority of the members of the commission shall constitute a quorum for the transaction of all business and carrying out the duties of the commission: PROVIDED, That on all fiscal matters, approval for passage must be by at least two-thirds majority of the said quorum. [1969 c 129 § 9.]

15.26.100 Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 13; 1975-'76 2nd ex.s. c 34 § 13; 1969 c 129 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.26.110 Powers of commission. The powers of the commission shall include the following:

- (1) To elect a chair, treasurer, and such other officers as it deems advisable;
- (2) To adopt any rules necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the administrative procedure act, chapter 34.05 RCW, as enacted or hereafter amended;
- (3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;
- (4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;
- (5) To own, lease, or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;
- (6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;
- (7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;
- (8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings

before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;

(9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state, or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) To establish a foundation using commission funds as grant money for the benefit of the tree fruit industry. The foundation may use commission funds for the purposes authorized by this chapter;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in this chapter. Personal service contracts must comply with *chapter 39.29 RCW;

(13) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research;

(14) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter;

(15) To accept and expend or retain any gift, bequest, contribution, or grant from private persons or private and public agencies to carry out the purposes provided in this chapter; and

(16) Such other powers and duties that are necessary to carry out the purpose of this chapter. [2010 c 78 § 1; 2010 c 8 § 6030; 1969 c 129 § 11.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2010 c 8 § 6030 and by 2010 c 78 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

15.26.120 Assessments levied—Referendum. There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the Washington apple commission, Washington state fruit commission, and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disap-

prove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [2011 c 103 § 1; 1969 c 129 § 12.]

Purpose—2011 c 103: "The purpose of this act is to make technical, nonsubstantive amendments to the sections included in this act. No substantive changes to the law are intended or implied." [2011 c 103 § 45.]

Collection by the Washington apple commission: RCW 15.24.110.

15.26.125 Assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW—Washington tree fruit research commission. The Washington tree fruit research commission may raise the assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars per ton in effect under chapter 16-560 WAC on July 1, 1995, to four dollars per ton. The commission may also establish an additional assessment on all tree fruits under RCW 15.26.155 of not more than eight cents per ton.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of the tree fruit research commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments. [1995 c 109 § 2.]

Additional notes found at www.leg.wa.gov

15.26.130 List of producers. The Washington apple commission and the Washington state fruit commission shall supply the director with a list of known producers subject to paying assessments to the respective commissions. The director, in addition, shall at the commission's cost compile a list of known tree fruit producers producing fruit not subject to assessments of the Washington apple commission and the Washington state fruit commission but subject to assessments or becoming subject to assessments under the provisions of this chapter. In compiling such list the director shall publish notice to producers of such tree fruit, requiring them to file with the director a report giving the producer's name, mailing address and orchard location. The notice shall be published once a week for four consecutive weeks in weekly or daily newspapers of general circulation in the area or areas where such tree fruit is produced. All producer reports shall be filed with the director within twenty days from the date of last publication of notice or thirty days of mailing notice to producers of such tree fruit, whichever is later. The director shall for the purpose of conducting any referendum affecting tree fruits subject to the provisions of this chapter keep such list up to date when conducting such referendum. Every person who becomes a producer after the list is compiled shall file with the director a similar report, giving his or her name, mailing address and orchard location. Such list shall be final and conclusive in conducting referendums and failure to notify a producer shall not be cause for the invalidation of any referendum. [2002 c 313 § 135; 1969 c 129 § 13.]

(2012 Ed.)

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.26.140 Increase in assessments by referendum. The producers of tree fruit subject to the provisions of this chapter may subsequent to approving initial assessment increase such assessment by referendum when approved by a majority of the producers voting. [1969 c 129 § 14.]

15.26.150 Additional assessments for special projects. The producers of any specific tree fruit subject to the provisions of this chapter may at any time by referendum conducted by the department and approved by a majority of the producers voting of such specific tree fruit establish an additional assessment on such specific tree fruit for special research projects of special interest to such specific tree fruit. [1969 c 129 § 15.]

15.26.155 Additional assessment. The producers of tree fruit subject to the provisions of this chapter may at any time, by referendum conducted by the department and approved by a majority of the producers voting, establish an additional assessment for programs including but not limited to sanitation programs and the reregistration of plant protection products for use on minor crops. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section. [1991 c 257 § 2; 1983 c 281 § 3.]

15.26.160 Suspension of assessments. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend for a period not exceeding one crop year at a time all or part of the assessments on tree fruit subject to the provisions of this chapter. [1969 c 129 § 16.]

15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit. Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he or she has received proof that the assessment due and payable the commission has been paid. [2010 c 8 § 6031; 1969 c 129 § 17.]

15.26.180 Records of persons receiving fruit. Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his or her own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two years subject to inspection by duly authorized representatives of the commission. [2010 c 8 § 6032; 1969 c 129 § 18.]

15.26.190 Return of dealers, handlers, and processors—Filing—Contents. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him or her

during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [2010 c 8 § 6033; 1969 c 129 § 19.]

15.26.200 Assessments—When due and payable—Collection. Such assessments on tree fruits shall be due and payable by the producer thereof by the end of the next business day that such tree fruits are sold or shipped for sale unless such time is extended as provided for in RCW 15.26.210 by rule or regulation of the commission. The commission may by rule or regulation provide that such assessments shall be collected from the producer and remitted by the person purchasing, or receiving such tree fruit for sale, processing, or shipment anywhere. [1969 c 129 § 20.]

15.26.210 Assessments—Constitute personal debt. Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: PROVIDED, That such extension of time shall not apply to any person who is in arrears in his or her payments to the commission. [2010 c 8 § 6034; 1969 c 129 § 21.]

15.26.220 Assessments—Failure to pay—Collection. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the commission may add to such unpaid assessment or sum an amount not more than ten percent but not less than one dollar of the same to defray the cost of enforcing the collection of such assessment, together with interest on the unpaid balance of one percent per month commencing the first month following the month in which payment was due. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the interest and the above specified ten percent thereon, and such reasonable attorneys' fees as may be allowed by the court, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 129 § 22.]

15.26.230 Disposition of moneys collected—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him or her in banks designated by the commission, and disbursed on the order of the commission. The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his or her faithful performance of his or her duties and his or her strict accounting of all funds of the commission. RCW 43.01.050 shall not apply to money collected under this chapter. [2010 c 8 § 6035; 1969 c 129 § 23.]

15.26.235 Collection, administration, and dispersal of funds for industry service programs. Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed separately from all other funds authorized and collected for research by the commission. The commission may appoint a committee to advise them regarding the need for specific industry service programs and regarding the administration of the assessments collected under RCW 15.26.155. [1983 c 281 § 4.]

15.26.240 Nonliability of state, members, employees. Obligations incurred by the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member. [2010 c 8 § 6036; 1969 c 129 § 24.]

15.26.250 Collection of assessments for commission by apple commission and state fruit commission. The Washington apple commission and Washington state fruit commission in order to avoid unnecessary duplication of costs and efforts in collecting assessments for tree fruits at the time said commissions collect assessments due under the provisions of their acts may also collect the assessment due the commission on such tree fruit. Such assessments on winter pears may be collected by the Washington state fruit commission or in a manner prescribed by the commission. Assessments collected for the commission by the Washington apple commission and the Washington state fruit commission shall be forwarded to the commissions expeditiously. No fee shall be charged the commission for the collection of assessments because the research conducted by the commission shall be of direct benefit to all commercial growers of tree fruits in the state of Washington. However, the commission shall reimburse at actual cost to the department or the Washington state fruit commission or apple commission any assessment collected for the commission by such agencies for any tree fruit subject to the provisions of this chapter, but not subject to pay assessments to the Washington state fruit commission or the Washington apple commission. [2002 c 313 § 136; 1969 c 129 § 25.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.26.260 Legal costs and expenses to be borne by commission. All legal costs and expenses that may be incurred in the collection of delinquent accounts owed this commission shall be borne by the commission; except as provided for otherwise in RCW 15.26.220. [1969 c 129 § 26.]

15.26.265 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 73.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.26.270 Copies of commission's proceedings, records, acts as evidence. Copies of the commission's proceedings, records, and acts when certified by the secretary and authenticated by the commission's seal shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1969 c 129 § 27.]

15.26.280 Moneys collected retained by commission. All moneys collected by the commission under the provisions of this chapter shall be retained by the commission for the purpose of carrying out the purpose and provisions of this chapter. The commission may accept and retain any moneys from private persons or private or public agencies to carry out the purposes and provisions of this chapter. [1969 c 129 § 28.]

15.26.290 Contracts with public or private agencies to carry out chapter. The commission may enter into agreement or contract with any private person or any private or public agency whether federal, state or local in order to carry out the purposes and provisions of this chapter. [1969 c 129 § 29.]

15.26.295 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 212; 2002 c 313 § 67.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.26.300 Violations—Penalty. (1) Except as provided in subsection (2) of this section, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 105; 1969 c 129 § 30.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.26.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 c 129 § 32.]

15.26.910 Severability—1969 c 129. If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 c 129 § 33.]

Chapter 15.28 RCW SOFT TREE FRUITS

Sections

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15.28.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state fruit commission.

(2) "Shipment" or "shipped" includes loading in a conveyance to be transported to market for resale, and includes delivery to a processor or processing plant, but does not include movement from the orchard where grown to a packing or storage plant within this state for fresh shipment;

(3) "Handler" means any person who ships or initiates the shipping operation, whether as owner, agent or otherwise;

(4) "Dealer" means any person who handles, ships, buys, or sells soft tree fruits other than those grown by him or her, or who acts as sales or purchasing agent, broker, or factor of soft tree fruits;

(5) "Processor" or "processing plant" includes every person or plant receiving soft tree fruits for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking, quick-freezing, brining, or for use in manufacturing a product;

(6) "Soft tree fruits" mean Bartlett pears and all varieties of cherries, apricots, prunes, plums, and peaches, which includes all varieties of nectarines. "Bartlett pears" means and includes all standard Bartlett pears and all varieties, strains, subvarieties, and sport varieties of Bartlett pears including Red Bartlett pears, that are harvested and utilized at approximately the same time and approximately in the same manner.

(7) "Commercial fruit" or "commercial grade" means soft tree fruits meeting the requirements of any established or recognized fresh fruit or processing grade. Fruit bought or sold on orchard run basis and not subject to cull weighback shall be deemed to be "commercial fruit."

(8) "Cull grade" means fruit of lower than commercial grade except when such fruit included with commercial fruit does not exceed the permissible tolerance permitted in a commercial grade;

(9) "Producer" means any person who is a grower of any soft tree fruit;

(10) "District No. 1" or "first district" includes the counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane and Lincoln;

(11) "District No. 2" or "second district" includes the counties of Kittitas, Yakima, and Benton county north of the Yakima river;

(12) "District No. 3" or "third district" comprises all of the state not included in the first and second districts;

(13) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail;

(14) "Department" means the department of agriculture;

(15) "Director" means the director of agriculture. [2002 c 313 § 104; 1989 c 354 § 27; 1973 c 11 § 1; 1963 c 51 § 1; 1961 c 11 § 15.28.010. Prior: 1955 c 47 § 1; 1947 c 73 § 1; Rem. Supp. 1947 § 2909-10.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.28.015 Regulating soft tree fruits—Commission created—Existing comprehensive scheme—Applicable

laws. The history, economy, culture, and the future of Washington state's agriculture involves the production of soft tree fruits. In order to develop and promote Washington's soft tree fruits as part of an existing comprehensive regulatory scheme the legislature declares:

(1) That the Washington state fruit commission is created;

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its soft tree fruits be properly promoted by (a) enabling the soft tree fruit industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered cooperative marketing, grading, and standardizing of soft tree fruits they produce; and (b) working to stabilize the soft tree fruit industry by increasing consumption of soft tree fruits within the state, the nation, and internationally;

(3) That producers of soft tree fruits operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the producers of soft tree fruits in their ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the soft tree fruit industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that soft tree fruits be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's soft tree fruits in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's soft tree fruits;

(d) Increase the knowledge of the health-giving qualities and dietetic value of soft tree fruits;

(e) Support and engage in cooperative programs or activities that benefit the production, handling, processing, marketing, and uses of soft tree fruits produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state and to stabilize and protect the soft tree fruit industry of the state; and

(6) That the production and marketing of soft tree fruit is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the soft tree fruit industry include:

(a) The federal marketing order under 7 C.F.R. Part 922 (apricots);

(b) The federal marketing order under 7 C.F.R. Part 923 (sweet cherries);

(c) The federal marketing order under 7 C.F.R. Part 924 (prunes);

(d) The federal marketing order under 7 C.F.R. Part 930 (tart cherries);

(e) The federal marketing order under 7 C.F.R. Part 931 (Bartlett pears);

- (f) Tree fruit research act under chapter 15.26 RCW;
- (g) Controlled atmosphere storage of fruits and vegetables under chapter 15.30 RCW;
- (h) Organic products act under chapter 15.86 RCW;
- (i) Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;
- (j) Washington food processing act under chapter 69.07 RCW;
- (k) Washington food storage warehouses act under chapter 69.10 RCW;
- (l) Weighmasters under chapter 15.80 RCW;
- (m) Horticultural pests and diseases under chapter 15.08 RCW;
- (n) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;
- (o) Planting stock under chapter 15.14 RCW;
- (p) Standards of grades and packs under chapter 15.17 RCW;
- (q) Washington pesticide control act under chapter 15.58 RCW;
- (r) Farm marketing under chapter 15.64 RCW;
- (s) Insect pests and plant diseases under chapter 17.24 RCW;
- (t) Weights and measures under chapter 19.94 RCW;
- (u) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and
- (v) Rules under the Washington Administrative Code, Title 16. [2011 c 103 § 28; 2002 c 313 § 103.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.020 Commission composition—Voting—Quorum. The commission is composed of seventeen voting members, as follows: Ten producers, four dealers, and two processors, who are appointed as provided in this chapter. The director, or an authorized representative, shall be a voting member of the commission. Other sections of this chapter that relate to the selection of voting members shall not apply to the director or his or her authorized representative.

A majority of the voting members constitute a quorum for the transaction of any business. [2003 c 396 § 13; 2002 c 313 § 105; 1967 c 191 § 1; 1961 c 11 § 15.28.020. Prior: (i) 1947 c 73 § 2; Rem. Supp. 1947 § 2901-11. (ii) 1947 c 73 § 9; Rem. Supp. 1947 § 2909-18. (iii) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.28.023 Director appoints members—Nominations—Advisory vote. (1) The director shall appoint the members of the commission.

(2) Candidates for positions on the commission shall be nominated under RCW 15.28.060.

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the

director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a position, the commission shall select a second candidate whose name will be forwarded to the director.

(4) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2003 c 396 § 16.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.024 Transition to director appointed commission. To accomplish the transition to a commission structure where the director appoints a majority of commission members, the names of the currently elected commission members shall be forwarded to the director for appointment to the commission within thirty days of May 20, 2003. Thereafter, the director shall appoint commission members pursuant to RCW 15.28.023 as the current commission member terms expire. [2003 c 396 § 17.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.030 Qualifications of voting members. All voting members must be citizens and residents of this state. Each producer member must be over the age of twenty-five years, and be, and for five years have been, actively engaged in growing soft tree fruits in this state, and deriving a substantial portion of his or her income therefrom, or have a substantial amount of orchard acreage devoted to soft tree fruit production as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of soft tree fruit. He or she cannot be engaged directly in business as a dealer. Each dealer member must be actively engaged, either individually or as an executive officer, employee or sales manager on a management level, or managing agent of an organization, as a dealer. Each processor member must be engaged, either individually or as an executive officer, employee on a management level, sales manager, or managing agent of an organization, as a processor. Only one dealer member may be in the employ of any one person or organization engaged in business as a dealer. Only one processor member may be in the employ of any one person or organization engaged in business as a processor. Said qualifications must continue throughout each member's term of office. [2010 c 8 § 6037; 1967 c 191 § 2; 1961 c 11 § 15.28.030. Prior: 1947 c 73 § 3; Rem. Supp. 1947 § 2909-12.]

15.28.040 Appointment of voting members—Positions. Of the producer members, four shall be appointed from the first district and occupy positions one, two, three and four; four shall be appointed from the second district and occupy positions five, six, seven and eight, and two shall be

appointed from the third district and occupy positions nine and ten.

Of the dealer members, two shall be appointed from each of the first and second districts and respectively occupy positions eleven and twelve from the first district and positions thirteen and fourteen from the second district.

The processor members shall be appointed from the state at large and occupy positions fifteen and sixteen. The dealer member position previously referred to as position twelve shall henceforth be position thirteen. The processor member position heretofore referred to as position fourteen shall cease to exist on March 21, 1967. The processor member position heretofore referred to as thirteen shall be known as position sixteen. [2003 c 396 § 14; 1967 c 191 § 3; 1961 c 11 § 15.28.040. Prior: 1947 c 73 § 4; Rem. Supp. 1947 § 2909-13.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.050 Terms of office. The regular term of office of the members of the commission shall be three years commencing on May 1, following the date of appointment and until their successors are appointed and qualified, except, however, that the first term of dealer position twelve in the first district shall be for two years and expire May 1, 1969. [2003 c 396 § 15; 1967 c 191 § 4; 1961 c 11 § 15.28.050. Prior: 1947 c 73 § 5; Rem. Supp. 1947 § 2909-14.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.055 Terms of present members. Present members of the state fruit commission as provided for in RCW 15.28.020 shall serve until the first day of May of the year in which their terms would ordinarily expire and until their successors are elected and qualified. [1967 c 191 § 8.]

15.28.060 Nominating meetings—Notice—Appointment—Ballots—Advisory vote—Eligible voters. The director shall call meetings at times and places concurred upon by the director and the commission for the purpose of nominating producer, dealer or processor members for potential appointment to the commission when such members' terms are about to expire. Notice of such meetings shall be given at least sixty days prior to the time the respective members' term is about to expire. The nominating meetings shall be held at least sixty days prior to the expiration of the respective members' term of office.

Notice shall be given by the commission by mail to all known persons having a right to vote for such respective nominee's potential appointment to the commission.

Further, the commission shall publish notice at least once in a newspaper of general circulation in the district where the nomination is to be held. Such a newspaper may be published daily or weekly. The failure of any person entitled to receive notice of such nominating meeting shall not invalidate such nominating meeting or the appointment of a member nominated at such meeting.

Any person qualified to serve on the commission may be nominated orally at the nomination meetings. Written nominations, signed by five persons qualified to vote for the said nominee, may be made for five days subsequent to the nomination meeting. Such written nominations shall be filed with the commission at its Yakima office.

The director shall cause an advisory vote to be held for commission positions. The advisory vote shall be by secret mail ballot. Persons qualified to vote for members of the commission shall, except as otherwise provided by law or rule or regulation of the commission, vote only in the district in which their activities make them eligible to vote for a potential member of the commission.

A producer to be eligible to vote in the advisory vote for a nominee as a producer member of the commission must be a commercial producer of soft tree fruits paying assessments to the commission.

When a legal entity acting as a producer, dealer, or processor is qualified to vote for a candidate in any district or area to serve in a specified position on the commission, such legal entity may cast only one vote for such candidate, regardless of the number of persons comprising such legal entity or stockholders owning stock therein. [2003 c 396 § 18; 1967 c 191 § 6; 1963 c 51 § 2; 1961 c 11 § 15.28.060. Prior: 1947 c 73 § 6; Rem. Supp. 1947 § 2909-15.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.070 Establishment of subdistricts—Rules and regulations. The commission shall have the authority, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act), for adopting rules and regulations, after public hearing, establishing one or more subdistricts in any one of the three districts. Such subdistricts shall include a substantial portion of the soft tree fruit producing area in the district in which they are formed.

The commission shall, when a subdistrict has been formed within one of the districts as in this section provided for, assign one of the districts' producer positions on the commission to said subdistrict. Such producer position may only be filled by a producer residing in such subdistrict, whether by apportionment or appointment. [2003 c 396 § 19; 1967 c 191 § 7; 1961 c 11 § 15.28.070. Prior: 1947 c 73 § 7; Rem. Supp. 1947 § 2909-16.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.080 Vacancies on commission—How filled. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position, until the next annual nominating meeting, shall be filled by vote of the remaining members of the commission. Following the next annual nomination meeting, the director shall appoint one of the two nominees selected by advisory ballot to fill the balance of the unexpired term. [2003 c 396 § 20; 1961 c 11 § 15.28.080. Prior: 1947 c 73 § 8; Rem. Supp. 1947 § 2909-17.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.090 Compensation of members—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 14; 1975-'76 2nd ex.s. c 34 § 14; 1967 c 191 § 5; 1961 c 11 § 15.28.090. Prior: 1947 c 73 § 10; Rem. Supp. 1947 § 2909-19.]

Legislative findings—Severability—Effective date—1984 c 287:
See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.28.100 Powers of commission. The Washington state fruit commission is hereby declared and created a corporate body. The commission has power:

- (1) To exercise all of the powers of a corporation;
- (2) To elect a chair and such other officers as it may deem advisable;
- (3) To adopt, amend, or repeal, from time to time, necessary and proper rules, regulations, and orders for the performance of its duties, which rules, regulations, and orders shall have the force of laws when not inconsistent with existing laws;
- (4) To employ, and at its pleasure discharge, such attorneys, advertising manager, agents or agencies, clerks and employees, as it deems necessary and fix their compensation;
- (5) To establish offices, and incur such expenses, enter into such contracts, and create such liabilities, as it deems reasonably necessary for the proper administration of this chapter;
- (6) To accept contributions of, or match private, state, or federal funds available for research, and make contributions to persons or state or federal agencies conducting such research;
- (7) To administer and enforce this chapter, and do and perform all acts and exercise all powers deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter, and to perpetuate and promote the general welfare of the soft tree fruit industry of this state;
- (8) To sue and be sued. [2010 c 8 § 6038; 1961 c 11 § 15.28.100. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iii) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

15.28.103 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

- (a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodities; and
- (b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 21.]

Effective date—2003 c 396: See note following RCW 15.66.030.

(2012 Ed.)

15.28.105 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 22.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.110 Duties of commission. The commission's duties are:

- (1) To adopt a commission seal;
- (2) To elect a secretary-manager and a treasurer, and fix their compensation. The same person may be elected to both offices;
- (3) To establish classifications of soft tree fruits;
- (4) To conduct scientific research and develop the healthful, therapeutic, and dietetic value of fruits, and promote the general welfare of the soft tree fruit industry of the state;
- (5) To conduct a comprehensive advertising and educational campaign to effectuate the objects of this chapter;
- (6) To increase the production, and develop and expand the markets, and improve the handling and quality of fruits;
- (7) To keep accurate accounts and records of all of its dealings, which shall be open to inspection and audit by the state auditor;
- (8) To investigate and prosecute violations of this chapter; and
- (9) To serve as an advisory committee to the director with regard to the adoption and enforcement of rules:
 - (a) Governing the grading, packing, and size and dimensions of commercial containers of soft tree fruits; and
 - (b) Fixing commercial grades of soft tree fruits and the issuance of certificates of inspection for those fruits. [2002 c 313 § 106; 1961 c 11 § 15.28.110. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 14; Rem. Supp. 1947 § 2909-23. (iii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iv) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.120 Copies of records as evidence. Copies of the commission's proceedings, records, and acts, when certified by the secretary and authenticated by the corporate seal, shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1961 c 11 § 15.28.120. Prior: 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

15.28.130 State, personal, nonliability—Obligations limited by collections—Defense to certain civil or criminal actions. Neither the state, nor any member, agent, or employee of the commission, is liable for the acts of the commission, or upon its contracts.

All salaries, expenses, costs, obligations, and liabilities of the commission, and claims arising from the administration of this chapter, are payable only from funds collected under this chapter.

In any civil or criminal action or proceeding for violation of any rule of [or] statutory or common law against monopolies or combinations in restraint of trade, including any action

under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2002 c 313 § 107; 1961 c 11 § 15.28.130. Prior: 1947 c 73 § 16; Rem. Supp. 1947 § 2909-25.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.140 District advisory and state commodity committees. There shall be separate district advisory committees and separate state commodity committees for each of the following soft tree fruits, to wit: Bartlett pears, peaches, apricots, prunes and plums, and cherries. The growers, dealers, or processors of each of the soft tree fruits, at their respective annual district meetings may elect separate district advisory committees for each of the soft tree fruits grown, handled, or processed in their respective districts. The district advisory committee shall consist of five members comprising three growers, one dealer and one processor of the respective soft tree fruit groups. Each state commodity committee shall consist of two members from, and selected by, each district advisory committee for each soft fruit. [1961 c 11 § 15.28.140. Prior: 1947 c 73 § 11; Rem. Supp. 1947 § 2909-20.]

15.28.150 Committee organization—Duties. Each district advisory committee and each state commodity committee shall select one of its members as chair. Meetings may be called by the chair or by any two members of any committee by giving reasonable written notice of the meeting to each member of such committee. A majority of the members shall be necessary to constitute a quorum. The district advisory committees and state commodity committees shall consult with and advise the commission on matters pertaining to the soft tree fruits which they respectively represent, and the commission shall give due consideration to their recommendations. Any grower, dealer, or processor, if qualified, may be a member of more than one committee. [2010 c 8 § 6039; 1961 c 11 § 15.28.150. Prior: 1947 c 73 § 12; Rem. Supp. 1947 § 2909-21.]

15.28.160 Annual assessment—Exemption—Brined sweet cherries assessable. An annual assessment is hereby levied upon all commercial soft tree fruits grown in the state or packed as Washington soft tree fruit of fifty cents per two thousand pounds (net weight) of said fruits, when shipped fresh or delivered to processors, whether in bulk, loose in containers, or packaged in any style of package, except, that all sales of five hundred pounds or less of such fruits sold by the producer direct to the consumer shall be exempt from said assessments. Sweet cherries which are brined are deemed to be commercial soft tree fruit and therefore assessable hereunder. [1989 c 354 § 28; 1963 c 51 § 3; 1961 c 11 § 15.28.160. Prior: 1947 c 73 § 18; Rem. Supp. 1947 § 2909-27.]

Additional notes found at www.leg.wa.gov

15.28.170 Research and advertising—Power to increase assessment. The commission shall investigate the needs of soft tree fruit producers, the condition of the markets, and extent to which the same require advertising and research. If the investigation shows that the revenue from the

assessments levied is inadequate to accomplish the objects of this chapter, it shall report its findings to the director, showing the necessities of the industry, the probable cost of the required program, and the probable revenue from the existing levy. It may then increase the assessments to be levied to an amount not exceeding two dollars per each two thousand pounds (net weight) of such fruits so contained or packed. [1961 c 11 § 15.28.170. Prior: 1947 c 73 § 25; Rem. Supp. 1947 § 2909-34.]

15.28.180 Increase of assessment for specific fruit or classification—Procedure. (1) The same assessment shall be made for each soft tree fruit, except that if a two-thirds majority of the state commodity committee of any fruit recommends in writing the levy of an additional assessment on that fruit, or any classification thereof, for any year or years, the commission may levy such assessment for that year or years up to the maximum of eighteen dollars for each two thousand pounds of any fruit except cherries or any classification thereof, as to which the assessment may be increased to a maximum of thirty dollars for each two thousand pounds, and except pears covered by this chapter, as to which the assessment may be increased to a maximum of eighteen dollars for each two thousand pounds: PROVIDED, That no increase in the assessment on pears becomes effective unless the increase is first referred by the commission to a referendum by the Bartlett pear growers of the state and is approved by a majority of the growers voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. Any funds so raised shall be expended solely for the purposes provided in this chapter and solely for such fruit, or classification thereof.

The commission has the authority in its discretion to exempt in whole or in part from future assessments under this chapter, during such period as the commission may prescribe, any of the soft tree fruits or any particular strain or classification of them.

(2) An assessment levied under this chapter may be increased in excess of the fiscal growth factor as determined under chapter 43.135 RCW if the assessment is submitted by referendum to the growers who are subject to the assessment and the increase is approved by a majority of those voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. [1997 c 303 § 3; 1992 c 87 § 1; 1983 1st ex.s. c 73 § 1; 1977 ex.s. c 8 § 1; 1965 ex.s. c 43 § 1; 1963 c 51 § 4; 1961 c 11 § 15.28.180. Prior: 1947 c 73 § 26; Rem. Supp. 1947 § 2909-35.]

Findings—1997 c 303: See note following RCW 43.135.055.

Additional notes found at www.leg.wa.gov

15.28.190 Deposit of funds—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, deposited by him or her in banks designated by the commission, and disbursed on its order.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in the sum of fifty thousand dollars, and conditioned upon his or her faithful performance of his or her

duties and his or her strict accounting of all funds of the commission.

None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [2010 c 8 § 6040; 1961 c 11 § 15.28.190. Prior: 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part.]

15.28.200 Use of funds—Contributions. All moneys collected from such levy shall be expended exclusively to effectuate the purposes and objects of this chapter. They shall be generally expended on promotion and improvement of the various commodities approximately in the ratio that funds are derived from such commodities, after deducting suitable amounts for general overhead and basic general research, unless a majority of the functioning state commodity committees consent to a larger expenditure on behalf of any commodity or commodities. Any funds contributed to the commission by any special group or raised by an additional levy on any commodity or classification thereof, shall be expended only in connection with such commodity. [1961 c 11 § 15.28.200. Prior: 1947 c 73 § 19; Rem. Supp. 1947 § 2909-28.]

15.28.210 Records kept—Preservation—Inspection of. Every dealer, handler, and processor shall keep a complete and accurate record of all soft tree fruits handled, shipped, or processed by him or her. Such record shall be in simple form and contain such information as the commission shall by rule or regulation prescribe. The records shall be preserved by such handler, dealer, and processor for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written request of the commission or its duly authorized agents. [2010 c 8 § 6041; 1961 c 11 § 15.28.210. Prior: 1947 c 73 § 20; Rem. Supp. 1947 § 2909-29.]

15.28.220 Returns to commission. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of soft tree fruits handled, shipped, or processed by him or her during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [2010 c 8 § 6042; 1961 c 11 § 15.28.220. Prior: 1947 c 73 § 21; Rem. Supp. 1947 § 2909-30.]

15.28.230 Due date of assessments—Delinquent penalty. All assessments levied and imposed by this chapter shall be due prior to shipment and shall become delinquent if not paid within thirty days after the time established for such payment according to regulations of the commission. A delinquent penalty shall be payable on any such delinquent assessment, calculated as interest on the principal amount due at the rate of ten percent per annum. Any delinquent penalty shall not be charged back against the grower unless he or she caused such delay in payment of the assessment due. [2010 c 8 § 6043; 1961 c 11 § 15.28.230. Prior: 1955 c 47 § 2; 1947 c 73 § 22; Rem. Supp. 1947 § 2909-31.]

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15.28.240 Collection rules—Use of "stamps." The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "Washington state fruit commission stamps" to be purchased from the commission and fixed or attached to the container, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Stamps shall be canceled immediately upon being so attached or fixed, and the date of cancellation shall be placed thereon. [1961 c 11 § 15.28.240. Prior: 1947 c 73 § 23; Rem. Supp. 1947 § 2909-32.]

15.28.250 Responsibility for payment of assessments—Due upon receipt—Delinquencies—Civil action. Unless the assessment has been paid by the grower and evidence thereof submitted by him or her, the dealer, handler, or processor is responsible for the payment of all assessments under this chapter on all soft tree fruits handled, shipped, or processed by him or her but he or she shall charge the same against the grower, who shall be primarily responsible for such payment. Assessments are due upon receipt of an invoice for the assessments.

If the assessment becomes delinquent, the department shall cease to provide inspection services under chapter 15.17 RCW to the delinquent party until that party pays all delinquent assessments, interest, and penalties.

Any assessment due and payable under this section constitutes a personal debt of every person so assessed or who otherwise owes the same. In addition, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons, together with the specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [2002 c 313 § 108; 1961 c 11 § 15.28.250. Prior: 1947 c 73 § 24; Rem. Supp. 1947 § 2909-33.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.260 Publications by commission—Subscriptions. If the commission publishes a bulletin or other publication, or a section in some established trade publication, for the dissemination of information to the soft tree fruit industry in this state, the first two dollars of any assessment paid annually by each grower, handler, dealer, and processor of such fruit shall be applied to the payment of his or her subscription to such bulletin or publication. [2010 c 8 § 6044; 1961 c 11 § 15.28.260. Prior: 1947 c 73 § 27; Rem. Supp. 1947 § 2909-36.]

15.28.270 Violations—Penalty. Every person shall be guilty of a misdemeanor who:

- (1) Violates or aids in the violation of any provision of this chapter, or
- (2) Violates or aids in the violation of any rule or regulation of the commission. [1961 c 11 § 15.28.270. Prior: 1947 c 73 § 28; Rem. Supp. 1947 § 2909-37.]

15.28.280 Venue of actions—Jurisdiction of courts.

Any prosecution brought under this chapter may be instituted or brought in any county in the state in which the defendant or any of the defendants reside, or in which the violation was committed, or in which the defendant or any of the defendants has his or her principal place of business.

The several superior courts of the state are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof, or of any rule or regulation promulgated by the commission. [2010 c 8 § 6045; 1961 c 11 § 15.28.280. Prior: 1947 c 73 § 29; Rem. Supp. 1947 § 2909-38.]

15.28.290 Duty to enforce. It shall be the duty of all state and county law enforcement officers and all employees and agents of the department to aid in the enforcement of this chapter. [1961 c 11 § 15.28.290. Prior: 1947 c 73 § 30; Rem. Supp. 1947 § 2909-39.]

15.28.300 Rules and regulations—Filing—Publication. Every rule, regulation, or order promulgated by the commission shall be filed with the director, and shall be published in a legal newspaper of general circulation in each of the three districts. All such rules, regulations, or orders shall become effective pursuant to the provisions of RCW 34.05.380. [1985 c 469 § 7; 1975 1st ex.s. c 7 § 38; 1961 c 11 § 15.28.300. Prior: 1947 c 73 § 31; Rem. Supp. 1947 § 2909-40.]

15.28.305 Rule making—Exemptions. Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and the provisions of chapter 19.85 RCW, the regulatory fairness act, when adoption of the rule is determined by a referendum vote of the affected parties. [2002 c 313 § 109.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.310 Authority to agents of commission to inspect. Agents of the commission, upon specific written authorization signed by the chair or secretary-manager thereof, shall have the right to inspect the premises, books, records, documents, and all other instruments of any carrier, railroad, truck, boat, grower, handler, dealer, and processor for the purpose of enforcing this chapter and collecting the assessments levied hereunder. [2010 c 8 § 6046; 1961 c 11 § 15.28.310. Prior: 1947 c 73 § 32; Rem. Supp. 1947 § 2909-41.]

15.28.315 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 213; 2002 c 313 § 68.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.320 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 74.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.28.325 Costs of implementing RCW 15.28.103. The costs incurred by the department of agriculture associated with the implementation of RCW 15.28.103 shall be paid for by the commission. [2003 c 396 § 23.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.901 Severability—2004 c 99. If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose. [2004 c 99 § 1.]

Effective date—2004 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2004]." [2004 c 99 § 4.]

15.28.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.28.910. Prior: 1947 c 73 § 33, part; Rem. Supp. 1947 § 2909-42, part.]

Chapter 15.30 RCW CONTROLLED ATMOSPHERE STORAGE OF FRUITS AND VEGETABLES

Sections

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15.30.260	Cooperation, agreements with other governmental agencies.
15.30.900	Fruits and vegetables in storage prior to enactment of chapter.
15.30.910	Severability—1961 c 29.

15.30.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Controlled atmosphere storage" means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere. [2010 c 8 § 6047; 1961 c 29 § 1.]

15.30.020 Annual license required—Expiration date.

It shall be unlawful for any person to engage in the business of operating a controlled atmosphere storage warehouse or warehouses without first obtaining an annual license from the director. Such license shall expire on August 31st of any one year. [1961 c 29 § 2.]

15.30.030 Application for license, contents—Issuance, prerequisites. Application for a license to operate a controlled atmosphere warehouse shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

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(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee. [2010 c 8 § 6048; 1961 c 29 § 3.]

15.30.040 Annual license fee. The application for an annual license to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee prescribed by the director by rule. [1988 c 254 § 6; 1961 c 29 § 4.]

15.30.050 Enforcement—Rules authorized, procedure. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 29 § 5.]

15.30.060 Rules—Oxygen content, temperature, and time period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored. The director shall adopt rules:

(1) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse: PROVIDED, That such maximum amount of oxygen retained shall not exceed five percent when apples are stored in such controlled atmosphere storage warehouse.

(2) Prescribing the period in which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section: PROVIDED, That such period shall not exceed twenty days when apples are stored in such controlled atmosphere warehouse.

(3) The length of time and the degrees of temperature at which any fruits or vegetables shall be retained in controlled atmosphere storage, before they may be classified as having been stored in controlled atmosphere storage: PROVIDED, That such period shall not be less than forty-five days for Gala and Jonagold varieties and not less than sixty days for other apples. [1999 c 70 § 1; 1994 c 23 § 1; 1967 c 215 § 1; 1961 c 29 § 6.]

15.30.070 License renewal date—Penalty for late renewal, exception. If an application for renewal of the license provided for in RCW 15.30.020 is not filed prior to September 1st of any one year, a penalty of two dollars and fifty cents shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he or she has not engaged in the business of operating a controlled atmosphere storage warehouse subsequent to the expiration of his or her prior license. [2010 c 8 § 6049; 1961 c 29 § 7.]

15.30.080 Denial, suspension, revocation of license—Grounds—Hearing required. The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.30.020 subsequent to a hearing, in any case in which he or she finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [2010 c 8 § 6050; 1961 c 29 § 8.]

15.30.090 Denial, suspension, revocation of license—Hearings subject to Administrative Procedure Act. All hearings for a denial, suspension, or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 45; 1961 c 29 § 9.]

Additional notes found at www.leg.wa.gov

15.30.100 Subpoenas—Witnesses and fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents and records, anywhere in the state in any hearing affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1961 c 29 § 10.]

15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number. The director when issuing a license to an applicant shall include a warehouse number which shall be preceded by the letters "CA". If the applicant in applying for a license includes a request for a specific warehouse number, the director shall issue such number to the applicant if such number has not been issued to a prior applicant. The letters "CA" and the number issued as provided in this section shall be marked in a manner provided by the director on all containers in which fruits or vegetables subject to the provisions of this chapter are placed or packed. [1961 c 29 § 11.]

15.30.120 Licensee to make daily determination of air components—Record, form, contents. The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the director for a period of two years and shall include the following:

- (1) The name and address of the licensee.
- (2) The number of the warehouse and the storage capacity of the warehouse.
- (3) The date of sealing of the warehouse.
- (4) Date of opening of the warehouse.
- (5) A daily record of the date and time of the tests, including the percentage of carbon dioxide, percentage of oxygen and the temperature. [1961 c 29 § 12.]

15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market. The identity of any fruits or vegetables represented as having been stored in a room or warehouse subject to the provisions of this chapter shall be maintained, by the CA number issued to the licensee in whose warehouse such fruits and vegetables were stored and the state lot inspection num-

ber issued by the director for such fruits or vegetables, from the time it leaves such warehouse through the various channels of trade and transportation to the retailer. [1961 c 29 § 13.]

15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter. The director may by rule establish condition and maturity standards for fruits or vegetables subject to the provisions of this chapter which may be higher than maturity and condition standards established for similar grades or classifications of such fruits or vegetables which are not subject to the provisions of this chapter. [1961 c 29 § 14.]

15.30.150 Minimum condition and maturity standards for apples. Minimum condition and maturity standards for apples subject to the provisions of this chapter shall be the U.S. condition and maturity standards for export as provided in 7 Code of Federal Regulations 51.317 on February 21, 1961: PROVIDED, That the director may adopt any subsequent amendment to such U.S. condition and maturity standards for export prescribed by the secretary of agriculture of the United States. [1961 c 29 § 15.]

15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when. No person in this state shall place or stamp the letters "CA" or a similar designation in conjunction with a number or numbers upon any container or subcontainer of any fruits or vegetables, unless the director has inspected such fruits or vegetables and issued a state lot number for such fruits or vegetables in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this chapter and that they meet all other requirements of this chapter or rules adopted hereunder: PROVIDED, That if such fruits or vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or a subsequent similar inspection by the director the letters "CA" and the state lot number shall be eradicated by the licensee. [1961 c 29 § 16.]

15.30.170 Inspection, certification may be requested by financially interested person. Any person financially interested in any fruits or vegetables subject to the provisions of this chapter may apply to the director for inspection and certification as to whether such fruits or vegetables meet the requirements provided for in this chapter or rules adopted hereunder. [1961 c 29 § 17.]

15.30.180 Fees for inspection and certification. The director shall prescribe the necessary fees to be charged to the licensee or owner for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter or rules adopted hereunder. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: PROVIDED, That the director in such instances may demand and collect inspection and certification fees prior to

inspecting and certifying any fruits or vegetables for such person. [1961 c 29 § 18.]

15.30.190 Certificate as evidence. Every inspection certificate issued by the director under the provisions of this chapter shall be received in all courts of the state as prima facie evidence of the statement therein. [1961 c 29 § 19.]

15.30.200 Disposition of fees. All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in chapter 15.17 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived for the inspection of any fruits and vegetables. [2011 c 103 § 2; 1961 c 29 § 20.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import. It shall be unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits or vegetables represented as having been exposed to "controlled atmosphere storage" or to use any such term or form of words or symbols of similar import unless such fruits or vegetables have been stored in controlled atmosphere storage which meets the requirements of this chapter or rules adopted hereunder. [1961 c 29 § 21.]

15.30.220 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1961 c 29 § 22.]

15.30.230 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 29 § 23.]

15.30.240 Prior civil or criminal liability not affected. The enactment of this chapter shall not have the effects of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on February 21, 1961. [1961 c 29 § 24.]

15.30.250 Penalties for violating chapter. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 106; 1961 c 29 § 25.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.30.260 Cooperation, agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of federal government in order

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to carry out the purpose and provisions of this chapter. [1961 c 29 § 26.]

15.30.900 Fruits and vegetables in storage prior to enactment of chapter. Any fruits or vegetables now in controlled atmosphere storage and removed after February 21, 1961 may be marked, shipped, represented and sold as having been exposed to controlled atmosphere storage if such fruits and vegetables meet the requirements of this chapter and the rules and regulations adopted hereunder. [1961 c 29 § 28.]

15.30.910 Severability—1961 c 29. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1961 c 29 § 27.]

Chapter 15.35 RCW

WASHINGTON STATE MILK POOLING ACT

Sections

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15.35.010 Short title. This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pricing and pooling among producers and processors of milk and milk products. [1993 c 345 § 1; 1971 ex.s. c 230 § 1.]

15.35.030 Declaration of public interest. It is hereby declared that:

(1) Milk is a necessary article of food for human consumption;

(2) The production, distribution, and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of adequate supplies of pure and wholesome milk and milk products necessary to its citizens, to promote competitive prices, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;

(4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;

(5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary. [1993 c 345 § 2; 1991 c 239 § 1; 1971 ex.s. c 230 § 3.]

15.35.060 Purposes. The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary to prevent disorderly marketing of milk due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;

(2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter, in accordance with chapter 34.05 RCW, which provide for pricing and pooling arrangements and declare such plans in effect for any marketing area;

(3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers. [1993 c 345 § 3; 1991 c 239 § 2; 1971 ex.s. c 230 § 6.]

15.35.070 Powers conferred to be liberally construed—Monopoly—Price setting. It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish wholesale or retail prices for processed milk products. [1993 c 345 § 5; 1991 c 239 § 3; 1971 ex.s. c 230 § 7.]

15.35.080 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department or the director's duly appointed representative;

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state or another state comprising one or more counties or parts thereof, where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk from cows as defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant, as that term is defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW:

(a) Who receives milk in an unprocessed state from dairy farms, and who processes milk into milk or milk products; and

(b) Whose milk plant is located within the state or from whose milk plant milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW or, if the director so provides by rule, a person who markets to a milk dealer milk produced under a grade A permit issued by another state;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) The terms "plan," "market area and pooling arrangement," "market area pooling plan," "market area and pooling plan," "market pool," and "market plan" all have the same meaning;

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers. [1994 c 143 § 509; 1993 c 345 § 4; 1992 c 58 § 1; 1991 c 239 § 4; 1971 ex.s. c 230 § 8.]

15.35.090 Milk control between states. (1) The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter. [1991 c 239 § 5; 1971 ex.s. c 230 § 9.]

15.35.100 Director's authority—Subpoena power—

Rules. Subject to the provisions of this chapter, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

(b) Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

(c) Determine what constitutes a natural milk market area;

(d) Establish quota systems within marketing plans, and to determine by using uniform rules, what portion of the milk produced by each producer shall be assigned to each quota classification;

(e) Provide for the pooling of minimum class values from the sales of each class of milk to milk dealers, and the equalization of returns to producers;

(f) Provide and establish market pools for a designated market area with such rules as the director may adopt;

(g) Employ an executive officer, who shall be known as the milk pooling administrator;

(h) Employ such persons or contract with such entities as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(i) Determine by rule, what portion of any increase in the available quotas shall be assigned to new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW.

(3) To make, adopt, and enforce all rules necessary to carry out the purposes and policies of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules. Nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or

any municipal corporation or the public service laws of this state. [1993 c 345 § 6; 1991 c 239 § 6; 1971 ex.s. c 230 § 10.]

15.35.105 Minimum milk price—Competition from outside the marketing area.

(1) In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and 15.35.100, the director shall, in addition to other appropriate criteria, consider the:

- (a) Cost of producing fluid milk for human consumption;
- (b) Transportation costs;
- (c) Milk prices in states or regions outside of the state that influence prices within the marketing areas;
- (d) Demand for fluid milk for human consumption;
- (e) Alternative enterprises available to producers; and
- (f) Economic impact on milk dealers.

(2) A milk dealer who believes that actual competition from outside the marketing area is having a significant economic impact on that milk dealer, may petition the director for a public hearing on an expedited basis to consider whether the minimum milk price in the market plan should be changed relative to the milk price to a competitor located outside the state plus transportation costs for that competitor to compete with the petitioning milk dealer.

(a) To be considered, the petition must identify the specific action requested, and must be accompanied by a statement summarizing the facts and evidence that would be provided at a public hearing by or on behalf of the petitioner to support the need for the requested action, including an identification of circumstances that have changed since the last rule-making proceeding at which the minimum price was established.

(b) Within twenty-one days of receiving the petition, the director shall either:

(i) Adopt rules on an emergency basis, in accordance with RCW 34.05.350;

(ii) File, and distribute to all milk dealers and other interested parties, notice that a hearing will be held within sixty days of receiving the petition;

(iii) Advise the petitioner in writing that the request for rule making is denied, and explain the reasons for the denial; or

(iv) Advise the petitioner in writing that the petition provides insufficient information from which to find that rule making should be initiated, and request that the petition be resubmitted with additional information.

(c) Except as otherwise specifically provided in this section, this petition must be handled in accordance with RCW 34.05.330, and the rule-making procedures of chapter 34.05 RCW.

(3) The director may adopt rules of practice or procedure with respect to the proceedings. [1993 c 345 § 7; 1991 c 239 § 7.]

15.35.110 Referendum on establishing or discontinuing market area pooling arrangement.

(1) The director, either upon his or her own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a

pooling arrangement should be established, a referendum of affected individual producers and milk dealers shall be conducted by the department.

(2) In order for the director to establish a market area and pooling plan:

(a) Sixty-six and two-thirds percent of the producers and producer-dealers that vote must be in favor of establishing a market area and pooling plan;

(b) Sixty-six and two-thirds percent of the milk dealers and producer-dealers that vote must be in favor of establishing a market area and pooling plan; and

(c) Producer-dealers providing notice to the director under RCW 15.35.115(1), shall be authorized to vote both as producers and as milk dealers.

(3) Except as provided in subsection (4) of this section, the director, within ninety days from the date the results of a referendum approved under subsection (2) of this section are filed with the secretary of state, shall adopt rules to establish a market pool in the market area, as provided for in this chapter. In conducting hearings on rules proposed for adoption under this subsection, the director shall invite public comment on whether milk regulation similar to the market area pooling plan proposed in the rules exists in neighboring states and whether a lack of such milk regulation in neighboring states would render such a market area pooling plan in this state ineffective or impractical.

(4) If, following hearings held under subsection (3) of this section, the director determines that the lack of milk regulation in neighboring states similar to the market area pooling plan proposed for this state would render such a pooling arrangement in this state ineffective or impractical, the director shall so state in writing. The director shall file the statement with the code reviser for publication in the Washington State Register. In such a case, a market area pooling plan shall not be established in the market area under subsection (3) of this section based upon the referendum that precipitated the hearings.

If the director determines that such a lack of milk regulation in neighboring states would not render such a market area pooling plan ineffective or impractical in this state, the director shall adopt rules in accordance with subsection (3) of this section.

(5) If fifty-one percent of the producers and producer-dealers voting representing fifty-one percent of the milk produced and fifty-one percent of the milk dealers and producer-dealers in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement.

(6) A referendum of affected producers, producer-dealers, and milk dealers shall be conducted only when a market area pooling arrangement is to be established. Only producers, milk dealers, and producer-dealers who are subject to the plan may vote on the termination of a pooling plan. [1993 c 345 § 8; 1992 c 58 § 4; 1991 c 239 § 8; 1971 ex.s. c 230 § 11.]

15.35.115 Referendum on establishing or discontinuing market area pooling arrangement—Producer-dealers. (1) Not less than sixty days before a referendum creating a market area and pooling plan with quotas is to be conducted under RCW 15.35.110, the director shall notify each pro-

ducer-dealer regarding the referendum. Any producer-dealer may choose to vote on the referendum and each choosing to do so shall notify the director in writing of this choice not later than thirty days before the referendum is conducted. Such a producer-dealer and any person who becomes a producer-dealer or producer by acquiring the quota of such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the sales of milk in fluid form from the producer facilities during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated milk dealer under the terms of such an approved plan. RCW 15.35.310(1) does not apply to a producer-dealer who is subject to regulation under this subsection.

(2) If a person was not a producer-dealer at the time notice was provided to producer-dealers under subsection (1) of this section regarding a referendum on a proposed market area and pooling plan with quotas, the plan was approved by referendum, and the person subsequently became a producer-dealer (other than by virtue of the person's acquisition of the quota of a producer-dealer who is fully regulated under the plan), the person is subject to all of the terms of the plan for producers and milk dealers during the duration of the plan and RCW 15.35.310(1) does not apply to such a person with regard to that plan.

(3) This subsection applies: To a person who was a producer-dealer at the time the notice was provided to producer-dealers under subsection (1) of this section regarding a referendum which was approved and who did not notify the director under subsection (1) of this section to vote in that referendum; and to a person who acquires the facility of such a person.

If such a person's sales of milk in fluid form subsequent to the adoption of the plan increases such that those sales in any year are more than fifty percent greater than the sales of milk in fluid form from the producer facilities during any of the previous five years, RCW 15.35.310(1) does not apply to that person with regard to that plan. Such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the producer-dealer's sales of milk in fluid form during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated dealer under the terms of such an approved plan.

If changes are made, on a market area-wide basis, to the quotas established under the plan, the director shall by rule adjust the fifty percent limitation provided by this section by an equivalent amount. [1993 c 345 § 9; 1992 c 58 § 2.]

15.35.120 Qualifications for producers to sign petitions or vote in referendums. (1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who

would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum. [1991 c 239 § 9; 1971 ex.s. c 230 § 12.]

15.35.130 Form of producer petitions. Petitions filed with the director by producers shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The director shall not accept a sheet on which such date is more than sixty days, prior to the time it is filed with the director. After a petition is filed, additional pages may be filed if time limits have not expired.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the director if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the director if the matter relates to a referendum. The director has the authority to clarify wording from a petition before making it a part of a referendum.

No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the director. [1971 ex.s. c 230 § 13.]

15.35.140 Director to establish systems within market areas. (1) The director shall establish a system of classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director may establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, or their cooperative associations, will receive the same prices for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. Such prices may reflect adjustments based on the value of component parts of each producer's milk. [1991 c 239 § 10; 1971 ex.s. c 230 § 14.]

15.35.150 Determination of quota. (1) Under a market pool and as used in this section, "quota" means a producer's or producer-dealer's portion of the total sales of milk in a market area in fluid form or, in the director's discretion, in other forms.

(2) The director may in each market area subject to a market plan establish each producer's and each producer-dealer's initial quota in the market area. Such initial quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record. In no case shall a producer-dealer receive as a quota an amount which is less than his or her fluid milk sales for the reference

period used by the director in determining quotas for other producers.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new increase in available quota in a reasonable proportion. The director may establish a method to proportionately decrease quota allocations in the event decreases in milk usage occur.

All subsequent changes or new quotas issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. [1993 c 345 § 10; 1992 c 58 § 5; 1991 c 239 § 11; 1971 ex.s. c 230 § 15.]

15.35.160 Contracts, rights and powers of associations not affected. No provision of this chapter shall be deemed or construed to:

(1) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation;

(2) Impair or affect any contract which any such cooperative association has with milk dealers or others which are not in violation of this chapter;

(3) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated. [1971 ex.s. c 230 § 16.]

15.35.170 Quotas—Transfer of—Limitations. Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any producer shall become null and void as of any time the producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property and may be taken or abolished by the state without compensation. [1991 c 239 § 12; 1971 ex.s. c 230 § 17.]

15.35.180 Records of milk dealers and cooperatives, inspection and audit of. The director shall examine and audit not less than one time each year or at any other such time the director considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order

administrator which provides the information necessary for such purposes. [1991 c 239 § 13; 1971 ex.s. c 230 § 18.]

15.35.190 Records necessary for milk dealers. All milk dealers subject to the provisions of this chapter shall keep the records as deemed necessary by the director. [1971 ex.s. c 230 § 19.]

15.35.200 Verified reports of milk dealers. Each milk dealer subject to the provisions of this chapter shall from time to time, as required by rule of the director, make and file a verified report, on forms prescribed by the director, of all matters on account for which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose of this chapter. Such reports shall cover a period specified in the order, and shall be filed within a time fixed by the director. [1971 ex.s. c 230 § 20.]

15.35.210 Milk dealer license—Required. It shall be unlawful for any milk dealer subject to the provisions of a marketing plan to handle milk subject to the provisions of such marketing plan without first obtaining an annual license from the director for each separate place of business where such milk is received or sold. Such license shall be in addition to any other license required by the laws of this state: PROVIDED, That the provisions of this section shall not become effective for a period of sixty days subsequent to the inception of a marketing plan in any marketing area prescribed by the director. [1971 ex.s. c 230 § 21.]

15.35.220 Milk dealer license—Application for—Contents. Application for a license to act as a milk dealer shall be on a form prescribed by the director and shall contain, but not be limited to, the following:

- (1) The nature of the business to be conducted;
- (2) The full name and address of the person applying for the license if an individual; and if a partnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director;
- (3) The complete address at which the business is to be conducted;
- (4) Facts showing that the applicant has adequate personnel and facilities to properly conduct the business of a milk dealer;
- (5) Facts showing that the applicant has complied with all the rules prescribed by the director under the provisions of this chapter;
- (6) Any other reasonable information the director may require. [1971 ex.s. c 230 § 22.]

15.35.230 Milk dealer license—Fees—Additional assessment for late renewal. (1) Application for each milk dealer's license shall be accompanied by an annual license fee to be established by the director by rule.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a late fee of up to one-half of the license fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional assessment shall

not apply if the applicant furnishes an affidavit that the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license. [1991 c 239 § 14; 1971 ex.s. c 230 § 23.]

15.35.240 Milk dealer license—Denial, suspension, or revocation of—Grounds. The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he or she is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his or her inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his or her intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him or her upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 23.86 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued. [2010 c 8 § 6051. Prior: 1989 c 307 § 36; 1989 c 175 § 47; 1987 c 164 § 1; 1971 ex.s. c 230 § 24.]

Legislative finding—1989 c 307: See note following RCW 23.86.007. Additional notes found at www.leg.wa.gov

15.35.250 Marketing assessment on producers—Additional assessment for milk testing—Penalty—Court action. (1) There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his or her agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this subsection and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

(2) In the event a producer's milk dealer does not provide milk testing in a state-certified laboratory, the director may levy an additional assessment on all such milk, not to exceed three cents per one hundred pounds of milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or the producer's agent subject to the marketing plan and shall be paid to the director for deposit into the agricultural local fund. Moneys from such assessments shall be used to provide testing of the milk in a state-certified laboratory.

The amount to be assessed and paid to the director under this subsection shall be determined by the director within the limits prescribed by this subsection.

(3) Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court. [1993 c 345 § 11; 1991 c 239 § 15; 1971 ex.s. c 230 § 25.]

15.35.260 Records and reports of licensees for assessment purposes. Each licensee, in addition to other records required under the provisions of this chapter, shall keep such records and make such reports as the director may require for the purpose of computing payments of assessments by such licensee. [1971 ex.s. c 230 § 26.]

15.35.270 Assessment due date. All assessments on milk subject to the provisions of this chapter and a marketing order shall be paid to the director on or before the twentieth day of the succeeding month for the milk which was received or handled in the previous month. [1971 ex.s. c 230 § 27.]

15.35.280 Separate account for each marketing plan—Deductions for departmental costs. The director shall establish a separate account for each marketing plan established under the provisions of this chapter, and all license fees and assessments collected under any such marketing plan shall be deposited in its separate account to be used only for the purpose of carrying out the provisions of such marketing plan: PROVIDED, That the director may deduct from each such account the necessary costs incurred by the department. Such costs shall be prorated among the several marketing plans if more than one is in existence under the provisions of this chapter. [1971 ex.s. c 230 § 28.]

15.35.290 Court actions to implement. In addition to any other remedy provided by law, the director in the name of the state shall have the right to sue in any court of competent jurisdiction for the recovery of any moneys due it from any persons subject to the provisions of this chapter and shall also have the right to institute suits in equity for injunctive relief and for purpose of enforcement of the provisions of this chapter. [1971 ex.s. c 230 § 29.]

15.35.300 General penalty—Misdemeanor—Exception. Any violation of this chapter and/or rules and regulations adopted thereunder shall constitute a misdemeanor: PROVIDED, That this section shall not apply to retail purchasers who purchase milk for domestic consumption. [1971 ex.s. c 230 § 30.]

15.35.310 Certain producer-dealers exempt. (1) Except as provided in RCW 15.35.115, the provisions of this chapter shall not apply to persons designated as producer-dealers, except that:

(a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and

(b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

(2) The director shall upon request designate producer-dealers and adopt rules governing eligibility for designation of a producer-dealer and cancellation of such designation. To receive such designation, a producer-dealer shall, at a minimum:

(a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4)(a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4)(b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2)(e) of this section, or (iii)

nonfat milk solids which are used to fortify fluid milk products;

(c) Neither be directly nor indirectly associated with the business control or management of, nor have a financial interest in, another dealer's operation; nor shall any other dealer be so associated with the producer-dealer's operation;

(d) Not allow milk from the designated milk production resources and facilities of the producer-dealer to be delivered in the name of another person as producer milk to another handler; and

(e) Not handle fluid milk products derived from sources other than the designated milk production facilities and resources, except for fluid milk product purchased from pool plants which do not exceed in the aggregate a daily average during the month of one hundred pounds.

(3) Designation of any person as a producer-dealer following a cancellation of its prior designation shall be preceded by performance in accordance with subsection (2) of this section for a period of one month.

(4) Designation of a person as a producer-dealer shall include the determination and designation of the milk production, handling, processing, and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(a) As milk production resources and facilities: All resources and facilities, milking herd, buildings housing such herd, and the land on which such buildings are located, used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer;

(ii) In which the producer-dealer in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-dealer. However, for purposes of this item (4)(a)(iii) any such milk production resources and facilities which the producer-dealer proves to the satisfaction of the director do not constitute an actual or potential source of milk supply for the producer-dealer's operation as such shall not be considered a part of the producer-dealer's milk production resources and facilities; and

(b) As milk handling, processing, and distributing resources and facilities: All resources and facilities including store outlets used for handling, processing, and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer; or

(ii) In which the producer-dealer in any way has an interest, including any contractual arrangement, or with respect to which the producer-dealer directly or indirectly exercises any degree of management or control.

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred. [1992 c 58 § 6; 1991 c 239 § 16; 1971 ex.s. c 230 § 31.]

15.35.900 Severability—1971 ex.s. c 230. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances, is not affected. [1971 ex.s. c 230 § 32.]

Chapter 15.36 RCW MILK AND MILK PRODUCTS

(Formerly: Fluid milk)

Sections

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15.36.551	Dairy inspection program—Assessment.
15.36.561	Dairy inspection program—Advisory committee—Purpose—Terms.

15.36.002 Intent. This chapter is intended to enact state legislation that safeguards the public health and promotes public welfare by: (1) Protecting the consuming public from milk or milk products that are: (a) Unsafe; (b) produced under unsanitary conditions; (c) do not meet bacterial standards under the PMO; or (d) below the quality standards under Title 21 C.F.R. or administrative rules and orders adopted under this chapter; and (2) requiring licensing of all aspects of the dairy production and processing industry. [1994 c 143 § 101.]

15.36.012 Definitions. For the purpose of this chapter:

"Adulterated milk" means milk that is deemed adulterated under appendix L of the PMO.

"Colostrum milk" means milk produced within ten days before or until practically colostrum free after parturition.

"DMO" means supplement I, the recommended sanitation ordinance for grade A condensed and dry milk products and condensed and dry whey, to the PMO published by the United States public health service, food and drug administration.

"Dairy farm" means a place or premises where one or more cows, goats, or other mammals are kept, a part or all of the milk or milk products from which is sold or offered for sale.

"Dairy technician" means any person who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized.

"Degrade" means the lowering in grade from grade A to grade C.

"Department" means the state department of agriculture.

"Director" means the director of agriculture of the state of Washington or the director's duly authorized representative.

"Grade A milk processing plant" means any milk processing plant that meets all of the standards of the PMO to process grade A pasteurized milk or milk products.

"Grade A pasteurized milk" means grade A raw milk that has been pasteurized.

"Grade A raw milk" means raw milk produced upon dairy farms conforming with all of the items of sanitation contained in the PMO, in which the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter as determined in accordance with RCW 15.36.201.

"Grade A raw milk for pasteurization" means raw milk produced upon dairy farms conforming with all of the same items of sanitation contained in the PMO of grade A raw milk, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.201.

"Grade C milk" is milk that violates any of the requirements for grade A milk but that is not deemed to be adulterated.

"Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or other mammals.

"Milk hauler" means a person who transports milk or milk products in bulk to or from a milk processing plant, receiving station, or transfer station.

"Milk processing" means the handling, preparing, packaging, or processing of milk in any manner in preparation for sale as food, as defined in chapter 69.04 RCW. Milk processing does not include milking or producing milk on a dairy farm that is shipped to a milk processing plant for further processing.

"Milk processing plant" means a place, premises, or establishment where milk or milk products are collected, han-

dled, processed, stored, bottled, pasteurized, aseptically processed, bottled, or prepared for distribution, except an establishment that merely receives the processed milk products and serves them or sells them at retail.

"Milk products" means the product of a milk manufacturing process.

"Misbranded milk" means milk or milk products that carries a grade label unless such grade label has been awarded by the director and not revoked, or that fails to conform in any other respect with the statements on the label.

"Official laboratory" means a biological, chemical, or physical laboratory that is under the direct supervision of the state or a local regulatory agency.

"Officially designated laboratory" means a commercial laboratory authorized to do official work by the department, or a milk industry laboratory officially designated by the department for the examination of grade A raw milk for pasteurization and commingled milk tank truck samples of raw milk for antibiotic residues and bacterial limits.

"PMO" means the grade "A" pasteurized milk ordinance published by the United States public health service, food and drug administration.

"Pasteurized" means the process of heating every particle of milk or milk product in properly designed and operated equipment to the temperature and time standards specified in the PMO.

"Person" means an individual, partnership, firm, corporation, company, trustee, or association.

"Producer" means a person or organization who operates a dairy farm and provides, sells, or offers milk for sale.

"Receiving station" means a place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, distributing, dispensing, delivering, supplying, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

"Wash station" means a place, facility, or establishment where milk tanker trucks are cleaned in accordance with the standards of the PMO. [2006 c 157 § 2; 1999 c 291 § 1; 1995 c 374 § 1; 1994 c 143 § 102; 1989 c 354 § 1; 1961 c 11 § 15.32.010. Prior: 1955 c 238 § 71; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part. Formerly RCW 15.32.010.]

Findings—2006 c 157: "The legislature finds that chapter 15.36 RCW includes the regulation of raw milk and raw milk products including arrangements known as "cow shares" in which one or more individuals purchase one or more shares in a milk-producing animal in return for a portion of the milk that is produced. The legislature also finds that the agencies charged with protecting public health and safety need to have strong enforcement mechanisms and be able to respond rapidly, comprehensively, and effectively. It is not the intent of this act to prohibit either the sale of raw milk or cow share or similar arrangements by producers and processors who are properly licensed under chapter 15.36 RCW." [2006 c 157 § 1.]

Additional notes found at www.leg.wa.gov

15.36.021 Milk and milk products—Rule-making authority—Grade A pasteurized and raw milk—Grade C milk and milk products. The director of agriculture is authorized to:

(1) Adopt rules necessary to carry out the purposes of chapter 15.36 RCW, which includes rules governing the farm storage tank and bulk milk tanker requirements, however the rules may not restrict the display or promotion of products covered under this section.

(2) By rule, establish, amend, or both, definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by the federal food and drug administration.

(3) By rule, adopt the PMO, DMO, and supplemental documents by reference to establish requirements for grade A pasteurized and grade A raw milk.

(4) Adopt rules establishing standards for grade A pasteurized and grade A raw milk that are more stringent than the PMO based upon current industry or public health information for the enforcement of this chapter whenever he or she determines that any such rules are necessary to carry out the purposes of this section and RCW 15.36.481.

(5) By rule, certify an officially designated laboratory to analyze milk for standard of quality, adulteration, contamination, and unwholesomeness.

(6) Adopt rules setting standards and requirements for the production of grade C milk and milk products. [1999 c 291 § 2; 1996 c 188 § 3; 1994 c 143 § 103; 1989 c 354 § 13; 1969 ex.s. c 102 § 1. Formerly RCW 15.36.011.]

Repealed definitions constitute rules: "The definitions constituting section 15.36.010, chapter 11, Laws of 1961 and RCW 15.36.010 as hereinafter in section 7 of this 1969 amendatory act repealed are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture." [1969 ex.s. c 102 § 2.]

Additional notes found at www.leg.wa.gov

15.36.025 Application of chapter 34.05 RCW. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial. [1999 c 291 § 3.]

15.36.041 Milk producer's license. Every milk producer must obtain a milk producer's license to operate as a milk producer as defined in this chapter. A milk producer's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. [1994 c 143 § 202.]

15.36.051 Milk processing plant license—Fee waiver. A milk processing plant must obtain an annual milk processing plant license from the department, which shall expire on June 30 of each year. A milk processing plant may choose to process (1) grade A milk and milk products, or (2) other milk products that are not classified grade A.

Only one license may be required to process milk; however, milk processing plants must obtain the necessary endorsements from the department in order to process products as defined for each type of milk or milk product processing. Application for a license shall be on a form prescribed by the director and accompanied by a fifty-five dollar annual license fee. The applicant shall include on the application the full name of the applicant for the license and the location of the milk processing plant he or she intends to operate and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable rules adopted under this chapter by the department, the applicant shall be issued a license or a renewal of a license.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. If a license holder wishes to engage in processing a type of milk product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of milk product only after the amendment has been approved by the department.

A licensee under this section shall not be required to obtain a food processing plant license under chapter 69.07 RCW to process milk or milk products.

The director shall waive the fee for a food processing license under chapter 69.07 RCW for persons who are also licensed as a milk processing plant. [2005 c 414 § 1; 1999 c 291 § 4; 1994 c 143 § 203; 1991 c 109 § 2; 1961 c 11 § 15.32.110. Prior: (i) 1927 c 192 § 11; 1923 c 27 § 8; 1919 c 192 § 29; RRS § 6192. (ii) 1919 c 192 § 33; RRS § 6195. Formerly RCW 15.32.110.]

Effective date—2005 c 414 §§ 1 and 4: "Sections 1 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 414 § 5.]

15.36.071 Milk hauler's license—Endorsements. A milk hauler must obtain a milk hauler's license to conduct the operation under this chapter. A milk hauler's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. A milk hauler's license shall also contain endorsements for individual milk transport vehicles. The license plate number and registration number for each milk transport vehicle shall be listed on the endorsement. [1995 c 374 § 2; 1994 c 143 § 205.]

Additional notes found at www.leg.wa.gov

15.36.081 Dairy technician's license—Application—Renewal—Fees. A dairy technician must obtain a dairy technician's license to conduct operations under this chapter. Such license shall be limited to those functions which the licensee has been found qualified to perform. Before issuing the license the director shall assess the applicant's qualifications

and may test the applicant for the functions for which application has been made.

Application for a license as a dairy technician shall be made upon forms provided by the director, and shall be filed with the department. The director may issue a temporary license to the applicant for such period as may be prescribed and stated in the license, not to exceed sixty days, but the license may not be renewed to extend the period beyond sixty days.

The initial application for a dairy technician's license must be accompanied by a license fee of ten dollars. The fee for renewal of the license is five dollars. All dairy technicians' licenses shall expire on December 31 of odd-numbered years. [1999 c 291 § 5; 1994 c 143 § 206; 1963 c 58 § 6; 1961 c 11 § 15.32.580. Prior: 1943 c 90 § 4; 1927 c 192 § 8; 1923 c 27 § 7; 1919 c 192 § 26; Rem. Supp. 1943 § 6189. Formerly RCW 15.32.580.]

15.36.091 Dairy technician's license—Records—

Inspection of. Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk and milk products bought, sold, or delivered upon the basis of weight or grade or on the basis of the milk fat, nonfat milk solids, or other components contained therein. Each licensee shall keep a copy of every original report of each test, weight, or grade made by him or her for a period of two months after making the report. No unfair, fraudulent, or manipulated sample shall be taken or delivered for analysis. [1994 c 143 § 207; 1963 c 58 § 9; 1961 c 11 § 15.32.590. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part. Formerly RCW 15.32.590.]

15.36.101 Milk wash station license. A wash station operator must obtain a milk wash station license to conduct the operation under this chapter for all wash stations separate from a milk processing plant. A milk wash station license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for such license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. [1994 c 143 § 208.]

15.36.111 Inspection of dairy farms and milk processing plants—Violations—Director's access. (1) The director shall inspect all dairy farms and all milk processing plants prior to issuance of a license under this chapter and at a frequency determined by the director by rule: PROVIDED, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of grade requirement, he or she shall make a second inspection after a lapse of such time as he or she deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Whenever there is any violation of the same requirement of this chapter on the second inspection, the director may initiate proceedings to degrade, suspend the license, or assess a civil penalty.

(2012 Ed.)

(2) One copy of the inspection report detailing the grade requirement violations shall be posted by the director in a conspicuous place upon an inside wall of the milk tank room or a mutually agreed upon location on a dairy farm or given to an operator of the milk processing plant, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

(3) Every milk producer and milk processing plant shall permit the director access to all parts of the establishment during the working hours of the producer or milk processing plant, which shall at a minimum include the hours from 8 a.m. to 5 p.m., and every milk processing plant shall furnish the director, upon his or her request, for official use only, samples of any milk product for laboratory analysis, and a true statement of the actual quantities of milk and milk products of each grade purchased and sold.

(4) The director shall have access to all parts of a dairy farm or facility that is not licensed as a milk producer or milk processing plant if the director has information that the dairy farm or facility is engaged in activities that require a license under this chapter. The director shall have access during the working hours of the dairy farm or facility, which shall at a minimum include the hours from 8 a.m. to 5 p.m. The director shall have the authority to take samples of milk or any milk products and water and environmental samples for laboratory analysis. For all establishments subject to this subsection and subsection (3) of this section, the director shall have access to records including, but not limited to, customer lists, milk production records, temperature records, and records of inspections and tests.

(5) If the director is denied access to a dairy farm or milk processing plant, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of his or her attempts to notify and locate the owner or the owner's agent and to secure consent. Upon application, the court may issue a search warrant for the purposes requested. [2006 c 157 § 3; 1999 c 291 § 6; 1996 c 189 § 1; 1994 c 143 § 209; 1961 c 11 § 15.36.100. Prior: 1949 c 168 § 5; Rem. Supp. 1949 § 6266-34. Formerly RCW 15.36.100.]

Findings—2006 c 157: See note following RCW 15.36.012.

Additional notes found at www.leg.wa.gov

15.36.131 Sale of out-of-state grade A milk and milk products. Grade A milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of this chapter and the PMO: PROVIDED, That the director shall satisfy himself or herself that the authority having jurisdiction over the production and processing is properly enforcing such provisions. [1994 c 143 § 211; 1961 c 11 § 15.36.500. Prior: 1949 c 168 § 11; Rem. Supp. 1949 § 6266-39. Formerly RCW 15.36.500.]

15.36.141 Grading of milk and milk products. Grades of milk and milk products as defined in this chapter shall be based on the respectively applicable standards con-

tained in this chapter, with the grading of milk products being identical with the grading of milk, except that bacterial standards are omitted in the case of cultured milk products. Vitamin D milk shall be only of grade A, certified pasteurized, or certified raw quality. The grade of a milk product shall be that of the lowest grade milk or milk product used in its preparation. [1994 c 143 § 510; 1984 c 226 § 3; 1981 c 297 § 2; 1961 c 11 § 15.36.120. Prior: 1955 c 238 § 12; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.120.]

Additional notes found at www.leg.wa.gov

15.36.151 Unlawful to sell, offer for sale, or deliver certain products—Diseased animals—Colostrum—Exceptions. It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows, goats, or other mammals affected with disease or of which the owner thereof has refused official examination and tests for disease; or

(2) Colostrum milk for consumption by humans, except that this prohibition regarding colostrum milk does not apply to:

(a) Colostrum milk made or to be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk; or

(b) Colostrum milk processed or to be processed by a licensed food processing facility or a milk processing plant as a nutritional supplement in accordance with the federal dietary supplement health and education act. Colostrum milk used for this purpose must be pasteurized or otherwise subjected to a heat process or other treatment sufficient to kill harmful organisms.

Colostrum milk described in subsection (2)(a) or (b) of this section is exempt from the prohibition provided by subsection (2) of this section if it comes from a licensed producer. Such colostrum milk is also exempt from meeting the standards for grade A raw milk required by this chapter. [2000 c 97 § 1; 1999 c 291 § 7; 1994 c 143 § 303; 1981 c 321 § 1; 1961 c 11 § 15.32.160. Prior: 1929 c 213 § 9; 1919 c 192 § 49; RRS § 6211. Formerly RCW 15.32.160.]

15.36.161 Cows, goats, and other mammals—Animal health requirements. (1) All milking cows, goats, and other mammals must meet the animal health requirements established by the state veterinarian under the authority of chapter 16.36 RCW.

(2) Milk or milk products from cows, goats, and other mammals intended for consumption in the raw state must be from a herd which is tested negative within the previous twelve months for brucellosis, tuberculosis, and any other disease the director may designate by rule. Additions to the herd must be tested negative for the diseases within the previous thirty days before introduction into the herd. The state veterinarian shall direct all testing procedures in accordance with state and national standards for animal disease eradication.

(3) Cows, goats, and other mammals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd. Cows, goats, and other mammals producing bloody, stringy, or otherwise abnormal milk, but with only slight inflammation of the udder shall be excluded from the herd until reexamination shows that the milk has become normal. [1999 c 291 § 8; 1982 c 131 § 2; 1961 c 11 § 15.36.150. Prior: 1955 c 238 § 15; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.150.]

15.36.171 Grades of milk and milk products that may be sold. The director may revoke the license of any milk processing plant or producer whose product fails to qualify as grade A pasteurized or grade A raw, or in lieu thereof may degrade the product to grade C and permit its sale as other than fluid milk or grade A milk products during a period not exceeding thirty days. In the event of an emergency, the director may permit the sale of grade C milk for more than thirty days. [1999 c 291 § 9; 1995 c 374 § 3; 1994 c 143 § 301; 1989 c 354 § 22; 1961 c 11 § 15.36.470. Prior: 1949 c 168 § 8; Rem. Supp. 1949 § 6266-37. Formerly RCW 15.36.470.]

Additional notes found at www.leg.wa.gov

15.36.181 Sale of adulterated or misbranded milk or milk products prohibited—Possession restricted. No person shall produce, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated or misbranded. It is unlawful for any person, elsewhere than in a private home, to have in possession any adulterated or misbranded milk or milk products.

Adulterated or misbranded milk or milk products may be impounded and disposed of by the director. [1999 c 291 § 10; 1994 c 143 § 302; 1961 c 11 § 15.36.070. Prior: 1949 c 168 § 2; Rem. Supp. 1949 § 6266-31. Formerly RCW 15.36.070.]

15.36.191 Milk or milk product analysis—Report of violative results. After obtaining a sample of milk or milk product for analysis, the department shall, within ten days of obtaining the result of the analysis, send any violative results to the person from whom the sample was taken or to the person responsible for the condition of the milk. [1999 c 291 § 11; 1994 c 143 § 304; 1989 c 354 § 11; 1961 c 11 § 15.32.530. Prior: 1907 c 234 § 12; RRS § 6278. Formerly RCW 15.32.530.]

Additional notes found at www.leg.wa.gov

15.36.201 Examination of milk and milk products—Violations—Director's options. (1) During any consecutive six months at least four samples of raw milk, raw milk for pasteurization, or both, from each dairy farm and raw milk for pasteurization, after receipt by the milk processing plant and prior to pasteurization, heat-treated milk products, and pasteurized milk and milk products from each grade A milk processing plant, for purposes of compliance with the PMO, shall be collected in at least four separate months and examined in an official laboratory: PROVIDED, That in the case of raw milk for pasteurization the director may accept the results of an officially designated laboratory.

(2) If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products established in this chapter and rules adopted under this chapter, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the same standard. An additional sample shall be taken after sending of the notice, but not before the lapse of three days. The director may initiate proceedings to degrade or suspend the milk producer's license or milk processing plant license or assess a civil penalty whenever the standard is again violated so that three of the last five consecutive samples exceed the limit of the same standard. [1999 c 291 § 12. Prior: 1994 c 143 § 401; 1994 c 46 § 11; 1989 c 354 § 17; 1981 c 297 § 1; 1961 c 11 § 15.36.110; prior: 1955 c 238 § 10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35. Formerly RCW 15.36.110.]

Additional notes found at www.leg.wa.gov

15.36.206 Source of milk and milk products—Seller's disclosure. Any person selling milk or milk products shall furnish the director, upon request, with the name of all milk processing plants or distributors from whom their milk and milk products are obtained. [1999 c 291 § 13.]

15.36.221 Grade A raw milk—Cooling. Milk and milk products for consumption in the raw state or for pasteurization shall be cooled within two hours of completion of milking to forty degrees Fahrenheit or less and maintained at that temperature until picked up, in accordance with RCW 15.36.201, so long as the blend temperature after the first and following milkings does not exceed fifty degrees Fahrenheit. [1995 c 374 § 4; 1984 c 226 § 5; 1961 c 11 § 15.36.260. Prior: 1955 c 238 § 37; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.260.]

Additional notes found at www.leg.wa.gov

15.36.231 Raw milk or milk products—Bottling and capping—Packaging—Labeling. (1) Milk and milk products for consumption in the raw state shall be bottled or packaged on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and operations. Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean dry place until used.

(2) All containers enclosing raw milk or any raw milk product shall be plainly labeled or marked with the word "raw" and the name of the producer or packager. The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading. [2005 c 414 § 2; 1999 c 291 § 14; 1961 c 11 § 15.36.265. Prior: 1955 c 238 § 38; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.265.]

15.36.241 Capping of milk or milk products. Capping of milk or milk products shall be done in a sanitary manner by means of approved equipment and operations. The cap or cover shall cover the pouring lip to at least its largest diameter. [2005 c 414 § 3; 1961 c 11 § 15.36.420. Prior:

1955 c 238 § 64; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.420.]

15.36.261 Butter or cheese—Pasteurization of milk or cream. All milk or cream used in the manufacture of pasteurized butter or cheese shall be pasteurized only in the plant where the butter or cheese is manufactured. [1961 c 11 § 15.32.410. Prior: 1919 c 192 § 12; RRS § 6175. Formerly RCW 15.32.410.]

15.36.271 "Pasteurized"—Use of word regulated. No person shall use the word "pasteurized" in connection with the sale, designation, advertising, labeling, or billing of milk, cream, or any milk product unless the same and all milk products used in the manufacture thereof consist exclusively of milk, skimmed milk, or cream that has been pasteurized in its final form. [1989 c 354 § 7; 1961 c 11 § 15.32.420. Prior: 1919 c 192 § 71; RRS § 6233. Formerly RCW 15.32.420.]

Additional notes found at www.leg.wa.gov

15.36.281 Unlawful use of containers—Seizure authorized. (1) It shall be unlawful for a person other than the owner, to possess for sale or barter or to use a container that is used to distribute packaged milk or milk products and that bears the name or trademark of an owner that has been properly registered.

(2) A person receiving packaged dairy products in containers bearing the registered name or trademark of the owner shall return the containers to the owner.

(3) When such a container is in the possession of a person other than the owner, the director may seize and hold it until it is established to the director's satisfaction that such possession is lawful. The director may seize such containers and return them to the owner, in which case the owner shall pay the expenses thereof. Neither the director nor a person who returns such containers shall be liable for containers lost in transportation. [1994 c 143 § 508; 1961 c 11 § 15.32.450. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 3; RRS § 6261. (iii) 1927 c 192 § 22a; 1915 c 101 § 4; RRS § 6262. (iv) 1927 c 192 § 22b; 1915 c 101 § 5; RRS § 6263. Formerly RCW 15.32.450.]

15.36.401 Licenses—Denial, suspension, revocation—Reasons. (1) A license issued under this chapter may be denied, suspended, or revoked by the director when a person:

(a) Fails to comply with the provisions of this chapter or the rules adopted under this chapter;

(b) Refuses the department access to a portion or area of a facility regulated under this chapter, for the purpose of carrying out the provisions of this chapter;

(c) Fails to comply with an order of the director;

(d) Refuses to make available to the department records required to be kept under the provisions of this chapter;

(e) Fails to comply with the applicable provisions of chapter 69.04 RCW, Washington intrastate commerce in food, drugs, and cosmetics act, or rules adopted under that chapter;

(f) Interferes with the director in the performance of his or her duties; or

(g) Exhibits negligence, misconduct, or lack of qualification in the discharge of his or her functions.

Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW.

(2) Whenever a milk transport vehicle is found in violation of this chapter or rules adopted under this chapter, the endorsement for that milk transport vehicle contained on a milk hauler's license may be suspended or revoked. The suspension or revocation does not apply to any other milk transport vehicle operated by the milk hauler.

(3) A license may be revoked by the director upon serious or repeated violations or after a license suspension or degrade for thirty continuous days without correction of the items causing the suspension or degrade. [1999 c 291 § 15; 1994 c 143 § 501.]

15.36.412 Issuance of cease and desist order. The director may issue a cease and desist order to any person whom the director has reason to believe is engaged in an activity for which a license is required by this chapter. The person to whom such notice is issued may request an adjudicative proceeding to contest the order. [2006 c 157 § 5.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.421 Milk processing plant or producer—License suspension. (1) If the director finds a milk processing plant or producer operating under conditions that constitute an immediate danger to public health, safety, or welfare or if the licensee or an employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend a license provided for in this chapter.

(2) If a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) If a license is summarily suspended, processing and shipping operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1999 c 291 § 16; 1994 c 143 § 503.]

15.36.451 Regrading of milk or milk products—Reinstatement of license. Any producer or milk processing plant whose milk has been degraded by the director, or whose license has been suspended may at any time make application for the regrading of his or her products or the reinstatement of his or her license.

Upon receipt of a satisfactory application, in case the lowered grade or the license suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the license on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.201.

In case the lowered grade of the applicant's product or the license suspension was due to a violation of an item other

than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he or she may deem necessary to assure himself or herself that the applicant is again complying with the higher grade requirements. The higher grade or license shall be reinstated upon confirmation that all violated items are corrected and any period for reduction in grade or license suspensions as ordered by the director has been completed. [1999 c 291 § 17; 1996 c 189 § 2; 1994 c 143 § 506; 1961 c 11 § 15.36.480. Prior: 1949 c 168 § 9; Rem. Supp. 1949 § 6266-37a. Formerly RCW 15.36.480.]

Additional notes found at www.leg.wa.gov

15.36.454 Failure to comply with chapter or rules—Civil penalties. (1) Except as provided in RCW 15.36.471 or subsection (2) or (3) of this section, any person who fails to comply with this chapter or the rules adopted under this chapter may be subject to a civil penalty in an amount of not more than one thousand dollars per violation per day.

(2) The director shall adopt rules establishing civil penalties assessed under RCW 15.36.111(1) and 15.36.201(2). The penalties shall be equitably based on the volume of milk or milk product handled by the producer or milk processor subject to the penalty.

(3) Whenever the results of an antibiotic, pesticide, or other drug residue test on a producer's milk are above the actionable level established in the PMO, the producer is subject to a civil penalty in an amount equal to one-half the value of the sum of the volumes of milk produced on the day prior to and the day of the adulteration. The value of the milk shall be computed using the weighted average price for the federal market order under which the milk is delivered.

(4) Each violation is a separate and distinct offense. The director shall impose the civil penalty in accordance with chapter 34.05 RCW. Moneys collected under this section and RCW 15.36.471 shall be remitted to the department and deposited into the revolving fund of the Washington state dairy products commission. [1999 c 291 § 18.]

15.36.455 Violations—Notice, orders, damages. (1) When the director has probable cause to believe that milk or milk products are being sold, distributed, stored, or transported in violation of this chapter or rules adopted under this chapter, the director may issue and serve upon the owner or custodian of the milk or milk products a written notice of embargo and order prohibiting the sale of the milk or milk products. If the owner or custodian is not available for service, the director may attach the notice of embargo and order prohibiting sale to the container holding the milk or milk products. The milk or milk products shall not be sold, used, or removed until this chapter has been complied with and the milk or milk products have been released from embargo under conditions specified by the director in writing.

(2) The department may issue a destruction and disposal order covering any embargoed milk or milk products. The destruction and disposal shall occur at the cost of the owner or custodian.

(3) The person to whom the notice of embargo and order prohibiting sale was issued or the person to whom a destruction or disposal order was issued may request an adjudicative proceeding to contest the order.

(4) A state court shall not allow the recovery of damages from an administrative action under this section if the court finds there was probable cause for the action. [2006 c 157 § 6.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.457 Authority to assess civil penalty. The authority to assess a civil penalty under RCW 15.36.111(1) and 15.36.201(2) shall be used only as consistent with the 1995 grade A pasteurized milk ordinance published by the United States public health service, food and drug administration and adopted by [the] department in WAC 16-101-700, or any subsequent version as adopted by the department under the authority of RCW 15.36.021(3). [1999 c 291 § 19.]

15.36.471 Component parts of fluid dairy products—Violations of standards—Civil penalty—Investigation. (1) The director shall adopt rules imposing a civil penalty of not more than ten thousand dollars for violations of the standards for component parts of fluid dairy products which are established under this chapter or adopted pursuant to RCW 69.04.398.

(2) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department. [1999 c 291 § 20; 1994 c 143 § 511; 1993 c 212 § 3; 1989 c 175 § 49; 1986 c 203 § 19. Formerly RCW 15.36.595.]

Additional notes found at www.leg.wa.gov

15.36.473 Failure to comply with chapter or rules—Criminal penalties. (1) It is unlawful for any person to sell raw milk from a dairy farm that is not licensed as a milk producer or a milk processing plant under this chapter.

(2) The sale of raw milk from a dairy farm that is not licensed as a milk producer and a milk processing plant under this chapter constitutes:

- (a) For the first offense, a misdemeanor; and
- (b) For the second and subsequent offenses, a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Neither the issuance of a cease and desist order nor payment of a civil penalty relieves the person so selling raw milk from criminal prosecution, but the remedy of a cease and desist order or civil penalty is in addition to any criminal liability. [2006 c 157 § 7.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.475 Laboratory tests—Admission as evidence. Tests performed by an official laboratory or an officially designated laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of a violation in any proceeding to enforce this chapter. [1999 c 291 § 21.]

15.36.481 Violations may be enjoined. The director may bring an action to enjoin the violation of any provision (2012 Ed.)

of this chapter or any rule adopted under this chapter in the superior court of the county in which the defendant resides or maintains his or her principal place of business or Thurston county. [1999 c 291 § 22; 1969 ex.s. c 102 § 4. Formerly RCW 15.36.600.]

15.36.491 Licenses—Money deposited in general fund—Exception. All moneys received for licenses under this chapter shall be deposited in the general fund, except that all moneys received for annual milk processing plant licenses under RCW 15.36.051 shall be deposited in the agricultural local fund established under RCW 43.23.230. [2005 c 414 § 4; 1999 c 291 § 23; 1961 c 11 § 15.32.710. Prior: 1899 c 43 § 27; RRS § 6249. Formerly RCW 15.32.710.]

Effective date—2005 c 414 §§ 1 and 4: See note following RCW 15.36.051.

15.36.511 Unlawful actions. (1) It is unlawful for any person to:

- (a) Interfere with or obstruct any person in the performance of official duties under this chapter;
- (b) Employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician;
- (c) Alter or tamper with a seal placed by the director;
- (d) Alter or tamper with a sample of milk or milk products taken or sealed by the director; or
- (e) Operate as a milk producer or milk processing plant without obtaining a license from the director.

(2) Except as provided under RCW 15.36.131, it is unlawful for a milk processing plant to accept milk from a person not licensed as a producer or milk processor. [2006 c 157 § 4; 1999 c 291 § 24; 1961 c 11 § 15.32.730. Prior: 1919 c 192 § 76; RRS § 6238. Formerly RCW 15.32.730.]

Findings—2006 c 157: See note following RCW 15.36.012.

15.36.525 Sanitary certificates—Rules—Fee for issuance. The department may issue sanitary certificates to milk processing plants under this chapter subject to such requirements as it may establish by rule. The fee for issuance is fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1999 c 291 § 25.]

15.36.531 Declaration of police power. It is hereby declared that this chapter is enacted as an exercise of the police power of the state of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several states which may by the Constitution of the United States of America have been reserved to the congress thereof. [1961 c 11 § 15.32.900. Prior: 1919 c 192 § 83; RRS § 6245. Formerly RCW 15.32.900.]

15.36.541 Chapter cumulative. Nothing in this chapter shall be construed as affecting or being intended to effect a repeal of chapter 69.04 RCW or RCW 69.40.010 through 69.40.025, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered

in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not in substitution therefor. And nothing in this chapter shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder, if there be a standard of quality, purity and strength therefor authorized by any law of this state, and such article comply therewith and be not misbranded. [1961 c 11 § 15.32.910. Prior: 1919 c 192 § 88; RRS § 6266. Formerly RCW 15.32.910.]

15.36.551 Dairy inspection program—Assessment. (Expires June 30, 2015.) There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk processing plant receiving the milk for processing. This shall include milk processing plants that produce their own milk for processing and milk processing plants that receive milk from other sources. Milk processing plants whose monthly assessment for receipt of milk totals less than twenty dollars in any given month are exempted from paying this assessment for that month. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk processing plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section expires June 30, 2015. [2010 c 17 § 1; 2004 c 132 § 1; 1999 c 291 § 26; 1995 c 15 § 1; 1994 c 34 § 1; 1993 sp.s. c 19 § 1; 1992 c 160 § 1. Formerly RCW 15.36.105.]

Additional notes found at www.leg.wa.gov

15.36.561 Dairy inspection program—Advisory committee—Purpose—Terms. (1) There is created a dairy inspection program advisory committee. The committee shall consist of eleven members appointed by the director. The director shall solicit nominations for members of the committee from Washington dairy producer organizations and milk processors. The committee shall consist of four members who are producers or their representatives, four members who are milk processors or their representatives, one member who is a producer processor, one member who is a milk hauler, and one member who is a milk equipment dealer.

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(2) The purpose of this advisory committee is to advise the director in the administration of the dairy inspection program and regarding policy issues related to this chapter.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years until their successor has been appointed and qualified. In the event a committee member resigns, is disqualified, or vacates a position on the committee for any reason the vacancy may be filled by the director under the provisions of this section governing appointments. The director may remove a member for cause.

(4) The committee shall elect one of its members as chair. The committee shall meet by the call of the director, chair, or a majority of the committee. Members of the committee shall serve without compensation. [1999 c 291 § 27; 1994 c 143 § 507; 1994 c 34 § 2; 1992 c 160 § 2. Formerly RCW 15.36.107.]

Chapter 15.37 RCW

MILK AND MILK PRODUCTS FOR ANIMAL FOOD

Sections

15.37.010	Definitions.
15.37.020	Enforcement of chapter—Rules, subject to administrative procedure act.
15.37.030	Minimum conditions for sale, etc.—When license required—Expiration date of license.
15.37.040	Application, issuance of license.
15.37.050	License fee on application.
15.37.060	Penalty for delinquency on renewal of license.
15.37.070	Denial, suspension, revocation of license.
15.37.080	Denial, suspension, revocation of license—Hearings subject to administrative procedure act.
15.37.090	Subpoenas—Witness fees.
15.37.100	Coloring of milk in containers, when required.
15.37.110	Labels on containers—Contents.
15.37.120	Entry on premises.
15.37.130	Injunctions authorized.
15.37.140	Chapter cumulative and nonexclusive.
15.37.150	Penalty.
15.37.900	Severability—1961 c 285.

15.37.010 Definitions.

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be. [2010 c 8 § 6052; 1961 c 285 § 1.]

15.37.020 Enforcement of chapter—Rules, subject to administrative procedure act.

The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 285 § 2.]

15.37.030 Minimum conditions for sale, etc.—When license required—Expiration date of license.

It shall be unlawful for any person to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk, for

animal food consumption, which does not meet, or has not been produced and handled under conditions prescribed for grade A milk as provided in chapter 15.36 RCW as enacted or hereafter amended, without first obtaining an annual license from the director which shall expire on June 30th following the date of issuance unless revoked prior thereto by the director for cause. [1961 c 285 § 3.]

15.37.040 Application, issuance of license. Application for a license shall be on a form prescribed by the director and shall include the following:

- (1) The full name of the person applying for the license.
- (2) If such applicant is a receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.
- (3) The principal business address of the applicant in the state and elsewhere.
- (4) The name of a person domiciled in this state authorized to receive and accept service or legal notice of all kinds.
- (5) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required fee. [2010 c 8 § 6053; 1961 c 285 § 4.]

15.37.050 License fee on application. The application for an annual license to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk for animal food consumption shall be accompanied by a license fee of twenty-five dollars. [1961 c 285 § 5.]

15.37.060 Penalty for delinquency on renewal of license. If an application for renewal of a license provided for in RCW 15.37.030 is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he or she has not sold, offered for sale, held for sale, or advertised for sale, milk, cream, or skim milk for animal food consumption subsequent to the expiration of his or her prior license. [2010 c 8 § 6054; 1961 c 285 § 6.]

15.37.070 Denial, suspension, revocation of license. The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.37.030 subsequent to a hearing in any case in which he or she finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [2010 c 8 § 6055; 1961 c 285 § 7.]

15.37.080 Denial, suspension, revocation of license—Hearings subject to administrative procedure act. All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provi-

sions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 50; 1961 c 285 § 8.]

Additional notes found at www.leg.wa.gov

15.37.090 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privileges granted by a license issued under the provisions of this chapter. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 285 § 9.]

15.37.100 Coloring of milk in containers, when required. It shall be unlawful for any person to sell, offer for sale, hold for sale, advertise for sale, trade, barter, or to give as an inducement for the sale of another product, any milk, cream, or skim milk, for animal food consumption which does not meet, or has not been produced under conditions prescribed for grade A milk, as prescribed in chapter 15.36 RCW as enacted or hereafter amended and rules adopted thereunder, and the applicable provisions of chapter 69.04 RCW (the Food, Drug and Cosmetic Act) as enacted and hereafter amended and rules adopted thereunder, in containers provided either by the vendor or vendee and which are capable of holding less than twenty liquid quarts, unless such milk, cream, or skim milk has been decharacterized with a color prescribed by the director which will not affect its nutritive value for animal food. [1961 c 285 § 10.]

15.37.110 Labels on containers—Contents. It shall be unlawful to sell, offer for sale, hold for sale, trade, barter, or to offer as an inducement for the sale of another product, milk, cream, or skim milk subject to the provisions of this chapter in containers which are not labeled in a conspicuous location readily visible to any person handling such containers with the following:

- (1) The name and address of the producer or distributor in letters not less than one-fourth inch in size.
- (2) The name of the contents in letters not less than one-fourth inch in size.
- (3) The words "not for human consumption" in letters at least one-half inch in size.
- (4) The words "decharacterized with harmless food coloring" in letters not less than one-fourth inch in size. [1961 c 285 § 11.]

15.37.120 Entry on premises. The director or his or her duly authorized representative may enter, during reasonable business hours, any premises where milk, cream, or skim milk subject to the provisions of this chapter is produced, handled, distributed, sold, offered for sale, held for sale, or used for the inducement of the sale of another product to determine if such milk, cream, or skim milk has been properly decharacterized as provided in RCW 15.37.100 or rules adopted hereunder. No person shall interfere with the director or his or her duly authorized representative when he or she is performing or carrying out the duties imposed on him or

her by this chapter or rules adopted hereunder. [2010 c 8 § 6056; 1961 c 285 § 12.]

15.37.130 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of any other remedy at law. [1961 c 285 § 13.]

15.37.140 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 285 § 14.]

15.37.150 Penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1961 c 285 § 15.]

15.37.900 Severability—1961 c 285. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 285 § 16.]

Chapter 15.44 RCW

DAIRY PRODUCTS COMMISSION

Sections

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General obligation bonds: Chapter 43.991 RCW.

15.44.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington state dairy products commission.

(2) "Current level of assessment" means the level of assessment paid by the producer as set by the commission which cannot exceed the maximum authorized assessment rate.

(3) "Dealer" means a person doing business in the state of Washington who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products.

(4) "Handler" means a person doing business in the state of Washington who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution.

(5) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(6) "Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers.

(7) "Person" means an individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(8) "Processor" means a person doing business in the state of Washington who uses milk or cream for canning, drying, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom.

(9) "Producer" means a person doing business in the state of Washington who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses.

(10) "Ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human consumption, or industrial or medicinal uses. [2012 c 107 § 1; 2002 c 313 § 88; 1985 c 261 § 17; 1979 ex.s. c 238 § 1; 1961 c 11 § 15.44.010. Prior: 1939 c 219 § 2; RRS § 6266-2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.44.015 Regulating dairy products—Commission created—Existing comprehensive scheme—Laws applicable. The history, economy, culture, and the future of Washington state's agriculture involves the dairy industry. In order to develop and promote Washington's dairy products as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That the Washington state dairy products commission is created. The commission may also take actions under the name "the dairy farmers of Washington";

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its dairy products be properly promoted by (a) enabling the dairy industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the dairy products they produce; and (b) working to stabilize the dairy industry by increasing consumption of dairy products within the state, the nation, and internationally;

(3) That dairy producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the dairy producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the dairy industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that dairy products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's dairy products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's dairy products;

(d) Increase the knowledge of the health-giving qualities and dietetic value of dairy products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of dairy products produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the dairy industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the dairy industry include the:

(a) Federal marketing order under 7 C.F.R., Part 1124;

(b) Dairy promotion program under the dairy and tobacco adjustment act of 1983, Subtitle B;

(c) Milk and milk products act under chapter 15.36 RCW and rules, including:

(i) The national conference of interstate milk shippers pasteurized milk ordinance;

(ii) The national conference of interstate milk shippers dry milk ordinance;

(iii) Standards for the fabrication of single-service containers;

(iv) Procedures governing cooperative state-public health service;

(v) Methods of making sanitation ratings of milk supplies;

(vi) Evaluation and certification of milk laboratories; and

(vii) Interstate milk shippers;

(d) Milk and milk products for animal food act under chapter 15.37 RCW and rules;

(e) Organic products act under chapter 15.86 RCW and rules;

(f) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, milk processing, food labeling, food standards, and food additives;

(g) Washington food processing act under chapter 69.07 RCW and rules;

(h) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(i) Animal health under chapter 16.36 RCW and rules;

(j) Weighmasters under chapter 15.80 RCW and rules; and

(k) Dairy nutrient management act under chapter 90.64 RCW and rules. [2011 c 103 § 29; 2002 c 313 § 87.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.020 Commission composition. The commission shall be composed of producers and at least one dealer. The director shall be a voting member of the commission.

As used in this chapter, "director" means the director of agriculture or his or her authorized representative. [2012 c 107 § 2; 2008 c 12 § 1; 2003 c 396 § 24; 2002 c 313 § 89; 1979 ex.s. c 238 § 2; 1975 1st ex.s. c 136 § 1; 1965 ex.s. c 44 § 2; 1961 c 11 § 15.44.020. Prior: 1959 c 163 § 2; prior: (i) 1939 c 219 § 3, part; RRS § 6266-3, part. (ii) 1939 c 219 § 4, part; RRS § 6266-4, part.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.44.021 Director appoints members—Nominations—Advisory vote. (1) The director shall appoint the members of the commission.

(2) Candidates for producer member positions on the commission shall be nominated under RCW 15.44.033. The director may select a nominated candidate for a position or may reject all candidates.

(3) If two candidates are nominated, the director may choose one, reject both, or call for an advisory vote between the two candidates. In the event there are more than two candidates nominated for the producer member positions, the director shall cause an advisory vote to be held. Advisory ballots shall be mailed to all producers in the district or area where a vacancy is about to occur and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission.

(4) The director may request that any candidate whose name is forwarded to the director for potential appointment submit a letter stating why he or she wishes to be appointed to the commission.

(5) If the director rejects one or more of the candidates nominated under RCW 15.44.033, the director may request that the commission provide additional qualified nominees

for consideration. Upon receipt of the nomination or nominations, the director may select a candidate, cause an advisory vote to be held, or reject the nominees. If the commission does not submit additional nominees to the director within thirty days of the director's request, the director shall nominate additional candidates for an advisory vote.

(6) The commission may appoint up to three nonvoting members who have expertise in marketing, operations, or other topics relevant to the work of the commission. The term of office for each nonvoting position is one year and may be renewed by the commission.

(7) The director shall appoint one person to a dealer position, unless the commission adopts rules providing for additional dealer positions on the commission. [2012 c 107 § 3; 2008 c 12 § 2; 2003 c 396 § 25.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.022 Transition to defined districts and areas.

(1) To accomplish the transition to the newly defined districts and areas as described in RCW 15.44.027, the initial producer appointments are as follows:

(a) The current incumbent representing district one must be appointed to the new district four position with an expiration date of June 30, 2015;

(b) The current incumbent representing district two must be appointed to the eastern Washington at large position with an expiration date of June 30, 2015;

(c) The current incumbent representing district three must be appointed to the new district one position with an expiration date of June 30, 2013;

(d) The current incumbent representing district four must be appointed to the new district three position with an expiration date of June 30, 2013;

(e) The current incumbent representing district five must be appointed to the state at large position with an expiration date of June 30, 2014;

(f) The current incumbent representing district six must be appointed to the new western Washington at large position with an expiration date of June 30, 2014;

(g) The current incumbent representing district seven must be appointed to the new district two position with an expiration date of June 30, 2014; and

(h) The current incumbent representing dealers must be appointed to the dealer position with an expiration date of June 30, 2013.

(2) Thereafter, producer and dealer members are nominated and appointed as provided for under RCW 15.44.021 and 15.44.033. [2012 c 107 § 4; 2003 c 396 § 28.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.023 Associations with same objective—Dual membership—Contracting. Any board member of the commission may be a member or officer of an association that has the same objectives for which the commission was formed. The commission may contract with the association for services necessary to carry out any purposes authorized under this chapter if an appropriate written contract has been entered into. [2002 c 313 § 101.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.027 Appointment of producer member—Commission's authority—Reasonably equal producer representation. (1) One producer member of the commission must be appointed from each of the following districts or areas:

(a) District one, which includes the counties of Whatcom, Skagit, Snohomish, San Juan, Island, and that portion of King county located north of Interstate 90;

(b) District two, which includes the counties of Clallam, Jefferson, Grays Harbor, Kitsap, Mason, Thurston, Pierce, Lewis, Wahkiakum, Cowlitz, Clark, Skamania, and that portion of King county located south of Interstate 90;

(c) District three, which includes the counties of Yakima, Klickitat, and Benton;

(d) District four, which includes the counties of Kittitas, Grant, Franklin, Walla Walla, Columbia, Garfield, Asotin, Whitman, Adams, Lincoln, Spokane, Douglas, Chelan, Okanogan, Ferry, Stevens, and Pend Oreille;

(e) Western Washington at large, which includes that portion of the state of Washington located west of the crest of the Cascade mountains;

(f) Eastern Washington at large, which includes that portion of the state of Washington located east of the crest of the Cascade mountains; and

(g) The state at large, which includes the entire state.

(2) The commission may adopt rules to eliminate, combine, revise, amend, or otherwise modify commission districts and areas in accordance with the intent and provisions of this chapter. In the event of redistricting, the procedure for transition of appointments to new districts or areas must be set forth in rule. The commission may adopt rules allowing the appointment of additional dealers to the commission.

(3) The boundaries and numbers of the commission districts or areas shall be maintained in a manner that ensures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members and maintains reasonable apportionment for each historical production or marketing area. However, the requirement of this section for reasonable equal representation of each producer on the commission does not require an equality of representation when the commission districts east of the crest of the Cascade mountains are compared to the commission districts west of the crest of the Cascade mountains.

(4) The commission shall, when requested in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW as enacted or hereafter amended, or on its own initiative, hold hearings to determine if new boundaries for each commission district or area should be established in order to afford each producer a reasonably equal representation in the commission, and if the commission so finds it shall change the boundaries of the commission districts or areas to carry out the proper reapportionment of producer representation on the commission.

(5) A review of boundaries and areas must be conducted by the commission at least every five years and take into consideration the distribution of producers, the number of head, production levels, and other relevant factors as determined by the commission. If the commission fails to carry out its responsibilities as set forth in this section, the director may upon request by ten producers institute a hearing to determine

if there is reasonably equal representation for each producer on the commission. If the director finds that such reasonably equal representation is lacking, he or she then shall realign the district boundaries in a manner which will provide proper representation on the commission for each producer. [2012 c 107 § 5; 2010 c 8 § 6057; 1975 1st ex.s. c 136 § 7.]

15.44.030 Member qualifications. Each of the producer members of the commission shall:

(1) Be a citizen and resident of this state and the district or area which he or she represents; and

(2) Be and for the five years last preceding his or her election have been actually engaged as an owner or shareholder in producing dairy products within this state. These qualifications must continue during each member's term of office.

The dealer member shall be actively engaged as a dealer in dairy products or employed in a dealer capacity as an officer or employee at management level in a dairy products organization. [2012 c 107 § 6; 2008 c 12 § 3; 1975 1st ex.s. c 136 § 2; 1965 ex.s. c 44 § 4; 1961 c 11 § 15.44.030. Prior: 1959 c 163 § 4; prior: 1939 c 219 § 3, part; RRS § 6266-3, part.]

15.44.032 Terms—Vacancies. (1) Except as provided in this section for initial appointments after redistricting or boundary modification, the term of office of each producer member of the commission shall be three years. Commission members shall continue to serve their terms until new appointments are made.

(2) Any vacancies that occur on the commission shall be filled by appointment by the director from a list containing the names of a candidate or candidates forwarded to the director by the commission. The director has the discretion to appoint or reject the candidate or candidates and, if the candidate or candidates are rejected, request additional candidates. The appointee shall hold office for the remainder of the term for which he or she is appointed to fill, so that commission memberships shall be on a uniform staggered basis.

(3) The term of office of each dealer shall be three years or until such time as a successor is duly appointed. Any vacancy for a dealer shall be forthwith filled by the director. The director, in making any dealer appointments, may consider lists of nominees supplied by dealers or producers also acting as dealers. [2012 c 107 § 7; 2008 c 12 § 4; 1975 1st ex.s. c 136 § 3; 1965 ex.s. c 44 § 5; 1961 c 11 § 15.44.032. Prior: 1959 c 163 § 5.]

15.44.033 Nomination and appointment procedure.

(1) Producer members of the commission shall be nominated by producers within the district or area that such producer members represent.

(2) Nomination for candidates to be appointed to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each producer in a district or area where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the incumbent's term will expire. The nomination form shall provide for the name of the nominee and the names of five other producers nominating such nominee. The producers nominating such nominee shall sign

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the form and shall further attest that the nominee meets the qualifications for a producer member to serve on the commission and that he or she will be willing to serve on the commission if appointed.

(3) All nominations as provided for in this section shall be returned to the director by April 30th, and the director shall not accept any nomination postmarked later than midnight April 30th, nor place the candidate thereon on the advisory ballot.

(4) Advisory vote ballots for appointing nominees to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts or areas where advisory votes are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the director in Olympia.

(5) The director shall determine whether the persons nominated possess the qualifications required by statute for the position. [2012 c 107 § 8; 2003 c 396 § 26; 1995 c 374 § 59; 1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Additional notes found at www.leg.wa.gov

15.44.035 Producer lists—Each producer responsible for accuracy—Use of lists.

(1) The commission shall prior to each advisory vote, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district or area for which the advisory vote is being held. The commission shall require each dealer and shipper in addition to the information required under RCW 15.44.110 to furnish the commission with a list of names of producers whose milk they handle.

(2) Any producer may on his or her own motion file his or her name with the commission for the purpose of receiving notice of the advisory vote.

(3) It is the responsibility of each producer to ensure that his or her correct address is filed with the commission.

(4) For all purposes of giving notice, holding referenda, and conducting advisory votes for nominees to the commission, the applicable list of producers corrected up to the day preceding the date the list is certified and mailed to the director is deemed to be the list of all producers or handlers, as applicable, entitled to notice or to vote. The list shall be corrected and brought up-to-date in accordance with evidence and information provided to the commission. [2012 c 107 § 9; 2003 c 396 § 27; 2002 c 313 § 90; 1965 ex.s. c 44 § 7.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.038 Quorum—Compensation—Travel expenses.

(1) A majority of the commission members shall constitute a quorum for the transaction of all business and the performance of all duties of the commission.

(2) Each member shall be compensated in accordance with RCW 43.03.230. Each member or employee shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter as defined by the commission in rule. Otherwise, if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2002 c 313 § 92; 1984 c 287 § 15; 1975-76 2nd ex.s. c 34 § 15; 1975 1st ex.s. c 7 § 12; 1961 c 11 § 15.44.038. Prior: 1959 c 163 § 8.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.44.040 Copies of records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary, shall be admissible in any court and be prima facie evidence of the truth of the statements therein contained. [1961 c 11 § 15.44.040. Prior: 1959 c 163 § 9; prior: 1939 c 219 § 4, part; RRS § 6266-4, part.]

15.44.050 Manager—Secretary-treasurer—Treasurer's bond. The commission shall elect a manager, who is not a member, and fix his or her compensation; and shall appoint a secretary-treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the state, in favor of the state and the commission, conditioned for the faithful performance of his or her duties and strict accounting of all funds to the commission. [2010 c 8 § 6058; 1979 ex.s. c 238 § 3; 1961 c 11 § 15.44.050. Prior: (i) 1939 c 219 § 5; RRS § 6266-5. (ii) 1939 c 219 § 6; RRS § 6266-6.]

Additional notes found at www.leg.wa.gov

15.44.055 Members—Removal from commission—Process. If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, the commission may recommend to the director that the commission member be removed from his or her position on the commission. Upon receiving such a recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position shall then be declared vacant and will be filled pursuant to the provisions of this chapter for filling vacancies. [2008 c 12 § 5.]

15.44.060 Powers and duties. The commission shall have the power and duty to:

(1) Elect a chair and such other officers as it deems advisable, and adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers, which shall have the effect of law when not inconsistent with existing laws;

(2) Administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to effectuate the purpose hereof;

(3) Employ and discharge advertising counsel, advertising agents, and such attorneys, agents, and employees as it deems necessary, and prescribe their duties and powers and fix their compensation;

(4) Establish offices, incur expenses, enter into contracts, and create such liabilities as are reasonable and proper for the proper administration of this chapter;

(5) Investigate and prosecute violations of this chapter;

(6) Conduct scientific research designed to improve milk production, quality, transportation, processing, and distribution and to develop and discover uses for products of milk and its derivatives;

(7) Make in its name such contracts and other agreements as are necessary to build demand and promote the sale of dairy products on either a state, national, or foreign basis;

(8) Keep accurate records of all its dealings, which shall be open to public inspection and audit by the regular agencies of the state;

(9) Conduct the necessary research to develop more efficient and equitable methods of marketing dairy products, and enter upon, singly or in participation with others, the promotion and development of state, national, or foreign markets;

(10) Participate in federal and state agency hearings, meetings, and other proceedings relating to the regulation of the production, manufacture, distribution, sale, or use of dairy products, to provide educational meetings and seminars for the dairy industry on such matters, and to expend commission funds for such activities;

(11) Retain the services of private legal counsel to conduct legal actions, on behalf of the commission. The retention of a private attorney is subject to the review of the office of the attorney general;

(12) Work cooperatively with other local, state, and federal agencies, universities, and national organizations for the purposes of this chapter;

(13) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes of this chapter;

(14) Engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter;

(15) Expend funds for commodity-related education, training, and leadership programs as the commission deems appropriate; and

(16) Work cooperatively with nonprofit and other organizations to carry out the purposes of this chapter. [2010 c 8 § 6059; 2002 c 313 § 93; 1999 c 300 § 1; 1979 ex.s. c 238 § 4; 1961 c 11 § 15.44.060. Prior: 1959 c 163 § 13; 1939 c 219 § 8; RRS § 6266-8.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.44.061 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising, promotion, and education of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education, training and leadership plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 29.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.062 Commission speaks for state—Director’s oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 30.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.063 Reimbursement for costs. (1) The commission shall reimburse the director for necessary costs for services conducted on behalf of the commission under this chapter.

(2) The commission may enter into an agreement with the director to administer this chapter or chapter 34.05 RCW. [2002 c 313 § 91.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.065 Commission may establish foundations. The commission may establish foundations using commission funds as grant money when the foundation benefits the dairy products industry. Commission funds may only be used for the purposes authorized in this chapter. [2002 c 313 § 100.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.070 Rules or orders to be filed and published—Rule-making exemptions. (1) Every rule or order made by the commission shall be filed with the director and published in two legal newspapers, one east and one west of the Cascade mountains, within ten days after it is adopted, and is effective as set forth under RCW 34.05.380.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, the provisions of chapter 19.85 RCW, the regulatory fairness act, and the provisions of RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties. [2002 c 313 § 94; 1975 1st ex.s. c 7 § 39; 1961 c 11 § 15.44.070. Prior: 1939 c 219 § 18; RRS § 6266-18.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum. (1) There is hereby levied upon all milk produced in this state an assessment of:

(a) 0.75 percent of class I price for 3.5 percent butter fat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; or

(b) While the federal dairy and tobacco adjustment act of 1983, Title I, Subtitle B-dairy promotion program, is in effect:

(i) An assessment rate not to exceed the rate approved at the most recent referendum that would achieve a ten cent per hundredweight credit to local, state, or regional promotion organizations provided by Title I, Subtitle B of the federal dairy and tobacco adjustment act of 1983; and

(ii) An additional assessment of 0.625 of one cent per hundredweight.

(2) Subject to approval by a producer referendum as provided in this section, the commission shall have the further power and duty to increase the amount of the maximum authorized assessment rate to be levied upon either milk or cream according to the necessities required to effectuate the stated purpose of the commission.

In determining such necessities, the commission shall consider one or more of the following:

(a) The necessities of:

(i) Developing better and more efficient methods of marketing milk and related dairy products;

(ii) Aiding dairy producers in preventing economic waste in the marketing of their commodities;

(iii) Developing and engaging in research for developing better and more efficient production, marketing, and utilization of agricultural products;

(iv) Establishing orderly marketing of dairy products;

(v) Providing for uniform grading and proper preparation of dairy products for market;

(vi) Providing methods and means including but not limited to public relations and promotion, for the maintenance of present markets, for development of new or larger markets, both domestic and foreign, for dairy products produced within this state, and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(vii) Restoring and maintaining adequate purchasing power for dairy producers of this state; and

(viii) Protecting the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality;

(b) The extent and probable cost of required research and market promotion and advertising;

(c) The extent of public convenience, interest, and necessity; and

(d) The probable revenue from the assessment as a consequence of its being revised.

(3)(a) This section shall apply where milk or cream is marketed either in bulk or package. However, this section shall not apply to milk or cream used upon the farm or in the household where produced.

(b) The increase in the maximum authorized assessment rate to be charged producers on milk and cream provided for in this section shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.

The referendum for approval of any increase in the maximum authorized assessment rate provided for in this section shall be by secret mail ballot furnished to all producers paying assessments to the commission. The commission shall furnish ballots to producers at least ten days in advance of the day it has set for concluding the referendum and counting the ballots. Any interested producer may be present at such time the commission counts the ballots. [2002 c 313 § 95; 1985 c

261 § 18; 1973 1st ex.s. c 41 § 1; 1969 c 60 § 1; 1965 ex.s. c 44 § 1; 1961 c 11 § 15.44.080. Prior: 1959 c 163 § 11; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.085 Assessments on class I or class II milk.

There is hereby levied on every hundredweight of class I or class II milk, as defined in RCW 15.44.087, sold by a dealer, including any milk sold by a producer who acts as a dealer, an assessment of:

(1) Five-eighths of one cent per hundredweight. Such assessment shall be in addition to the producer assessment paid by any producer who also acts as a dealer.

(2) Any additional assessment, within the power and duty of the commission to levy, such that the total assessment shall not exceed one cent per hundredweight, as required to effectuate the purpose of this section.

Such assessment may be increased by approval of dealers and producers who also act as dealers, subject to the standards set forth in chapter 15.44 RCW for increasing or decreasing assessments. The funds derived from such assessment shall be used for educational programs and the sum of such funds derived annually from said dealers and producers who act as dealers shall be matched by assessments derived from producers for the purpose of funding the educational purposes by an amount not less than the moneys collected from dealers and producers who act as dealers. [2002 c 313 § 96; 1979 ex.s. c 238 § 5; 1975 1st ex.s. c 136 § 5.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.44.087 Class I and class II milk defined. For the purpose of RCW 15.44.085, class I and class II milk sold means milk from cows produced by a producer as defined in RCW 15.44.010 and utilized as follows:

(1) Class I milk shall be all skim milk and butterfat:

(a) Sold in the form of fluid milk product subject to the following limitations and exceptions:

(i) Any products fortified with added nonfat milk solids shall be class I in an amount equal only to the weight of an equal volume of like unmodified product of the same butterfat content.

(ii) Fluid milk products in concentrated form shall be class I in an amount equal to the skim milk and butterfat used to produce the quantity of such products sold.

(iii) Products classified as class II pursuant to subsection (2) of this section are excepted.

(b) Packaged fluid milk products in inventory at the end of the month.

(2) Class II milk shall be all skim milk and butterfat:

(a) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, or starter; or

(b) Any milk or milk product, sterilized and either (i) packaged in hermetically sealed metal, plastic, foil, paper, or glass containers and used to produce condensed milk and condensed skim milk, or (ii) in fluid milk products disposed of in bulk to commercial food processing establishments or

producer milk sold to a commercial food processing establishment. [1979 ex.s. c 238 § 6; 1975 1st ex.s. c 136 § 6.]

Additional notes found at www.leg.wa.gov

15.44.090 Collection of assessments—Lien. All assessments shall be collected by the first dealer and deducted from the amount due the producer, and all moneys so collected shall be paid to the treasurer of the commission on or before the twentieth day of the succeeding month for the previous month's collections, and deposited by him or her in banks designated by the commission to the credit of the commission fund. If a dealer or a producer who acts as a dealer fails to remit any assessments, or fails to make deductions for assessments, such sum shall, in addition to penalties provided in this chapter, be a lien on any property owned by him or her, and shall be reported to the county auditor by the commission, supported by proper and conclusive evidence, and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes. [2010 c 8 § 6060; 1979 ex.s. c 238 § 7; 1975 1st ex.s. c 136 § 4; 1961 c 11 § 15.44.090. Prior: 1959 c 163 § 12; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

Additional notes found at www.leg.wa.gov

15.44.100 Records of dealers, shippers—Preservation—Inspection. Each dealer or shipper shall keep a complete and accurate record of all milk or cream handled by him or her. The record shall be in such form and contain such information as the commission shall prescribe, and shall be preserved for a period of two years, and be submitted for inspection at any time upon request of the commission or its agent. [2010 c 8 § 6061; 1961 c 11 § 15.44.100. Prior: 1959 c 163 § 14; 1939 c 219 § 10; RRS § 6266-10.]

15.44.110 Reports of dealers and shippers to commission—Subpoenas. (1) Each dealer and shipper shall at such times as by rule required file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of dairy products handled, processed, manufactured, delivered, and shipped, and the quantity of all milk and cream delivered to or purchased by such person from the various producers of dairy products or their agents in the state during the period or periods prescribed by the commission.

(2) The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind and may issue subpoenas to witnesses to give testimony. [2002 c 313 § 97; 1961 c 11 § 15.44.110. Prior: 1959 c 163 § 15; 1939 c 219 § 11; RRS § 6266-11.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure.

(1) In order to adequately advertise and market Washington dairy products in the domestic, national and foreign markets, and to make such advertising and marketing research and development as extensive as public interest and necessity require, and to put into force and effect the policy of this chapter 15.44 RCW, the commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign, and keep such research, advertis-

ing and education as continuous as the production, sales, and market conditions reasonably require.

(2) The commission shall investigate and ascertain the needs of dairy products and producers, the conditions of the markets, and the extent to which public convenience and necessity require advertising and research to be conducted.

(3)(a) The commission may decrease or increase the current level of assessment provided for in RCW 15.44.080 following a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW: PROVIDED, That the current level of assessment established in this manner shall not exceed the maximum authorized assessment rate established by producers in the most recent referendum.

(b) Upon receipt of a petition bearing the names of twenty percent of the producers requesting a reduction in the current level of assessment, the commission shall hold a hearing in accordance with chapter 34.05 RCW to receive producer testimony. After considering the testimony of the producer, the commission may adjust the current level of assessment. [1985 c 261 § 19; 1969 c 60 § 2; 1961 c 11 § 15.44.130. Prior: 1959 c 163 § 17; 1949 c 185 § 2; 1939 c 219 § 13; Rem. Supp. 1949 § 6266-13.]

15.44.133 Promotional hosting expenditures—Rules.

The commission is authorized to adopt rules governing promotional hosting expenditures by commission employees, agents, or board members under RCW 15.04.200. [2002 c 313 § 99.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.140 Authority to inspect premises and records—Subpoenas. (1) The commission through its agents may inspect the premises and records of any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products for the purpose of enforcing this chapter.

(2) The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind for any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products for the purpose of enforcing this chapter. [2002 c 313 § 98; 1961 c 11 § 15.44.140. Prior: 1939 c 219 § 19; RRS § 6266-19.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.150 Action against commission enforced as if a corporation—Liability—Limitations. Any action by the commission administrator, member, employee, or agent thereof pertaining to the performance or nonperformance or misperformance of any matters or things authorized, required, or permitted by this chapter, and any other liabilities, debts, or claims against the commission shall be enforced in the same manner as if the commission were a corporation. No liability for the debts or actions of the commission shall exist against the state of Washington or any subdivision or instrumentality thereof. Liability for the debts or actions of the commission's administrator, member, employee, or agent incurred in their official capacity under this chapter does not exist either against the administrator, members, employees, and agents in their individual capacity or the state of Washington. The administrator, its members, and its agents and employees are not responsible individually in any way whatsoever to any person for errors in judgment,

mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime.

All persons employed or contracting under this chapter shall be limited to, and all salaries, expenses, and liabilities incurred by the commission shall be payable only from the funds collected under this chapter. [2003 c 396 § 32; 2002 c 313 § 102; 1961 c 11 § 15.44.150. Prior: 1939 c 219 § 7; RRS § 6266-7.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.160 Enforcement of chapter. All state and county law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.44.160. Prior: 1939 c 219 § 16; RRS § 6266-16.]

15.44.170 Penalty. Whoever violates or aids in the violation of the provisions of this chapter shall be guilty of a gross misdemeanor. [1961 c 11 § 15.44.170. Prior: 1939 c 219 § 14; RRS § 6266-14.]

15.44.180 Jurisdiction of courts. The superior courts are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof. [1961 c 11 § 15.44.180. Prior: 1939 c 219 § 15; RRS § 6266-15.]

15.44.185 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 214; 2002 c 313 § 69.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.190 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 75.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.195 Costs of implementing RCW 15.44.061.

The costs incurred by the department of agriculture associated with the implementation of RCW 15.44.061 shall be paid for by the commission. [2003 c 396 § 31.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.901 Severability—2004 c 99. If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose. [2004 c 99 § 2.]

Effective date—2004 c 99: See note following RCW 15.28.901.

15.44.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.44.910. Prior: 1939 c 219 § 17, part; RRS § 6266-17, part.]

**Chapter 15.48 RCW
SEED BAILMENT CONTRACTS**

Sections

- 15.48.270 Definitions.
15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor.
15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens.

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Liens, crop: Chapter 60.11 RCW.

15.48.270 Definitions. As used in this chapter:

(1) "Seed bailment contract" means any bailment contract for the increase of agricultural seeds where the bailor retains title to seed, seed stock, plant life and the seed crop resulting therefrom.

(2) "Bailee" is any tenant farmer or landowner or both, who, for an agreed compensation agrees to plant agricultural seeds furnished by the bailor and to care for, cultivate, harvest and deliver to the bailor the seed resulting therefrom.

(3) "Bailor" is any seed contractor who delivers agricultural seed to a bailee under the terms of a seed bailment contract which requires the bailee to plant, care for, cultivate, harvest and deliver the resultant seed crop to the bailor and requires the bailor to pay the bailee the amount of compensation agreed upon in the contract for the bailees' services in producing the seed. [1967 c 114 § 14.]

Additional notes found at www.leg.wa.gov

15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor. Seed bailment contracts for the increase of agricultural seeds shall not create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9A RCW. No filing, recording, or notice of a seed bailment contract shall be required

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under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract. [2011 c 103 § 4; 1967 c 114 § 15.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens.

All payments of money required by the terms of a seed bailment contract to be made by a bailor to a bailee shall be subject to security interests perfected as required by *chapter 62A.9 RCW, as amended, and all agricultural liens provided for and perfected in accordance with Title 60 RCW. [1967 c 114 § 16.]

***Reviser's note:** Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.

Additional notes found at www.leg.wa.gov

**Chapter 15.49 RCW
SEEDS**

(Formerly: Washington state seed act)

Sections

- 15.49.005 Purpose—Rules.
15.49.011 Definitions.
15.49.021 Standards and label requirements—Rules.
15.49.031 Labels—Required information.
15.49.041 Violations—Civil penalty.
15.49.051 Unlawful practices.
15.49.061 Exceptions.
15.49.071 Damages—Arbitration prerequisite to legal action.
15.49.081 Arbitration—Filing fee—Rules.
15.49.091 Arbitration—Procedure.
15.49.101 Investigation of complaint by arbitration committee.
15.49.111 Arbitration committee—Creation—Generally.
15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act.
15.49.330 Screenings—Removal required—Disposition.
15.49.350 Permit to condition certified seed.
15.49.360 Records—Maintenance—Availability of records and samples for inspection.
15.49.370 Department's enforcement authority.
15.49.380 Dealer's license to distribute seeds.
15.49.390 Renewal of dealer's license.
15.49.400 Seed labeling permit.
15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation.
15.49.420 Damages precluded.
15.49.460 Injunctions.
15.49.470 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance.
15.49.480 Cooperation and agreements with other agencies.
15.49.900 Existing liabilities not affected.
15.49.920 Effective date—1969 c 63.
15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal.
15.49.940 Short title.
15.49.950 Severability—1969 c 63.

15.49.005 Purpose—Rules. The purpose of this chapter is to provide uniformity and consistency in the packaging of agricultural, vegetable, and flower seeds so as to facilitate the interstate movement of seed, to protect consumers, and to provide a dispute-resolution process. The department of agriculture is hereby authorized to adopt rules in accordance with chapter 34.05 RCW to implement this chapter. To the extent possible, the department shall seek to incorporate into the

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rules provisions from the recommended uniform state seed law in order to attain consistency with other states. [1989 c 354 § 70.]

Additional notes found at www.leg.wa.gov

15.49.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(2) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

(3) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) "Bulk seed" means seed distributed in a nonpackage form.

(5) "Certifying agency" means (a) an agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (b) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(7) "Dealer" means any person who distributes.

(8) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(9) "Director" means the director of the department of agriculture.

(10) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(11) "Flower seeds" includes seeds of herbaceous plants grown from their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(12) The terms "foundation seed," "registered seed," and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department.

(13) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(14) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(15) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with

an open pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(16) "Inert matter" means all matter not seed, that includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule.

(17) "Kind" means one or more related species or subspecies that singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(18) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this chapter, and it may include any other information relating to the labeled seed.

(19) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

(20) "Lot number" shall identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a conditioner's or dealer's code.

(21) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(22) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(23) "Official sample" means any sample of seed taken and designated as official by the department.

(24) "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

(25) "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive, and/or difficult to control by cultural or chemical practices.

(26) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(27) "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result is expressed as a whole number.

(28) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(29) "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices.

(30) "Retail" means to distribute to the ultimate consumer.

(31) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(32) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(33) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(34) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(35) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(36) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(37) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(38) "Vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(39) "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department.

(40) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(41) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process. [1989 c 354 § 73.]

Additional notes found at www.leg.wa.gov

15.49.021 Standards and label requirements—Rules.

(1) The department shall establish by rule standards and label requirements for the following seed types: Agricultural seed (including grass, lawn, and turf seed), flower seed, and vegetable seed.

(2) The standards and label requirements shall be divided into the following categories:

(a) Percentage of kind and variety of each seed component present; and

(b) Percentage of weed seed (restricted and common).

(3) The standards and label requirements developed by the department shall at a minimum include:

(a) Amount of inert material;

(b) Specifics and warning for treated seed;

(c) Specifics for coated seed;

(d) Specifics and duration for inoculated seed;

(e) Specifics for seed which is below standard;

(f) Specifics for seed contained in containers, mats, tapes, or other planting devices;

(g) Specifics for seed sold in bulk;

(h) Specifics for hybrid seed; and

(i) Specifics for seed mixtures. [1989 c 354 § 71.]

Additional notes found at www.leg.wa.gov

15.49.031 Labels—Required information. In addition to the requirements contained in RCW 15.49.021, each seed label shall contain the following:

(1) The name and address of the person who labeled the seed and who sells, offers, or exposes the seed for sale within the state;

(2) Lot number identification;

(3) Seed origin;

(4) Germination rate and date of germination test or the year for which the seed was packaged for sale. [1989 c 354 § 72.]

Additional notes found at www.leg.wa.gov

15.49.041 Violations—Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than two thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. [1989 c 354 § 74.]

Additional notes found at www.leg.wa.gov

15.49.051 Unlawful practices. (1) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this state unless the test to determine the percentage of germination is completed within a fifteen-month period prior to sale, provided that germination tests for seed packaged in hermetically sealed containers shall be completed within thirty-six months prior to sale. The department shall establish rules for allowing retesting.

(2) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state not labeled in accordance with this chapter or having false or misleading labeling or for which there has been false or misleading advertisement.

(3) It is unlawful to represent seed to be certified unless it has been determined by a seed-certifying agency that such seed conformed to standards of purity and identity or variety in compliance with the rules adopted under this chapter.

(4) It is unlawful to attach any tags of similar size and format to the official certification tag that could be mistaken for the official certification tag.

(5) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state labeled with a variety name but not certified by an official seed-certifying agency when it is a variety for which a United States certification of plant variety protection under the plant variety protection act (7 U.S.C. Sec. 2321 et seq.) specifies sale only as a class of certified seed: PROVIDED, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(6) It is unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label required by this chapter or its implementing rules or to alter or substitute seed in a manner that may defeat the purpose of this chapter;

(b) To disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(c) To hinder or obstruct in any way, any authorized person in the performance of his or her duties under this chapter;

(d) To fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby;

(e) To use the word "trace" as a substitute for any statement that is required; and

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(7) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state that consists of or contains: (a) Prohibited noxious weed seeds; or (b) restricted noxious weed seeds in excess of the number declared on the label. [1989 c 354 § 75.]

Additional notes found at www.leg.wa.gov

15.49.061 Exceptions. (1) The provisions of RCW 15.49.011 through 15.49.051 do not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage by, or being transported or consigned to a conditioning establishment for conditioning if the invoice or labeling accompanying the shipment of such seed bears the statement "seeds for conditioning" and if any labeling or other representation that may be made with respect to the unconditioned seed is subject to this chapter;

(c) To any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if the carrier is not engaged in producing, conditioning, or marketing seeds subject to this chapter; or

(d) Seed stored or transported by the grower of the seed.

(2) No person may be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter that were incorrectly labeled or represented as to kind, species, variety, or type, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels. [1989 c 354 § 76.]

Additional notes found at www.leg.wa.gov

15.49.071 Damages—Arbitration prerequisite to legal action. (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention

to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under RCW 15.49.011 through 15.49.101.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04A RCW, and RCW 15.49.081 through 15.49.111 will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under RCW 15.49.081 through 15.49.111. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court. [2005 c 433 § 36; 1989 c 354 § 77.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

Additional notes found at www.leg.wa.gov

15.49.081 Arbitration—Filing fee—Rules. The director shall adopt rules, in conformance with chapter 34.05 RCW, providing for mandatory arbitration under this chapter and governing the proceedings of the arbitration committee. The decisions and proceedings of the arbitration committee shall not be subject to chapter 34.05 RCW. The department shall establish by rule a filing fee to cover the administrative costs of processing a complaint and submitting it to the arbitration committee. [1989 c 354 § 78.]

Additional notes found at www.leg.wa.gov

15.49.091 Arbitration—Procedure. (1) To submit a claim to mandatory arbitration, the buyer shall make and file with the department a sworn complaint against the dealer alleging the damages sustained. The buyer shall send a copy of the complaint to the dealer by United States registered mail. The filing fee shall be submitted to the department with each complaint filed and may be recovered from the dealer or other seller upon recommendations of the arbitration committee.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the department, by United States registered mail, the answer to the complaint. Failure of a dealer to file a timely answer to the complaint shall be so documented for the record.

(3) The director shall, upon receipt of the answer, refer the complaint and answer to the arbitration committee for investigation, findings, and recommendations.

(4) Any dealer may request an investigation by the arbitration committee for any dispute involving seed which may not otherwise be before the arbitration committee. [1989 c 354 § 79.]

Additional notes found at www.leg.wa.gov

15.49.101 Investigation of complaint by arbitration committee. (1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee chair may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties. [2010 c 8 § 6062; 1989 c 354 § 80.]

Additional notes found at www.leg.wa.gov

15.49.111 Arbitration committee—Creation—Generally. (1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and four members appointed by the director. The director shall make appointments so that the committee is balanced and does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the chair may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its chair to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary. [2010 c 8 § 6063; 1989 c 354 § 81.]

Additional notes found at www.leg.wa.gov

15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act. The department shall administer, enforce, and carry out the provisions of this chapter and may adopt regulations necessary to carry out its purpose. The adoption of regulations shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act), as enacted and hereafter amended.

The department when adopting regulations in respect to the seed industry shall consult with affected parties, such as growers, conditioners, and distributors of seed. Any final regulation adopted shall be based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the purchasers and users of seed as well as the members of the seed industry.

When seed labeling, terms, methods of sampling and analysis, and tolerances are not specifically stated in this chapter or otherwise designated by the department, the department shall, in order to promote uniformity, be guided by officially recognized associations, or regulations under The Federal Seed Act. [1981 c 297 § 9; 1969 c 63 § 31.]

Additional notes found at www.leg.wa.gov

15.49.330 Screenings—Removal required—Disposition. (1) All screenings, removed in the cleaning or conditioning of seeds, which contain prohibited or restricted noxious weed seeds shall be removed from the seed conditioning plant only under conditions that will prevent weed seeds from being dispersed into the environment.

(2) The director may by regulation adopt requirements for moving, conditioning, and/or disposing of screenings. [1981 c 297 § 11; 1979 c 154 § 1; 1969 c 63 § 33.]

Additional notes found at www.leg.wa.gov

15.49.350 Permit to condition certified seed. Upon application for a permit to condition certified seed, the department shall inspect the seed conditioning facilities of the applicant to determine that genetic purity and identity of seed conditioned can be maintained. Upon approval, the department shall issue a seed conditioning permit, for each regular place of business, which shall be conspicuously displayed in the office of such business. The permit shall remain in effect as long as the facilities comply with the department's requirements for such permit. [1981 c 297 § 13; 1969 c 63 § 35.]

Additional notes found at www.leg.wa.gov

15.49.360 Records—Maintenance—Availability of records and samples for inspection. The seed labeling registrant whose name appears on the label shall:

(1) Keep, for a period of two years after the date of final disposition, complete records of each lot of seed distributed: PROVIDED, That the file sample of each lot of seed distributed need be kept for only one year.

(2) Make available, during regular working hours, such records and samples for inspection by the department. [1969 c 63 § 36.]

15.49.370 Department's enforcement authority. The department shall have the authority to:

(1) Sample, inspect, make analysis of, and test seeds distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such seeds are in compliance with the provisions of this chapter. The methods of sampling and analysis shall be those adopted by the department from officially recognized sources. The department, in determining for administrative purposes whether seeds are in violation of this chapter, shall be guided by records, and by the official sample obtained and analyzed as provided for in this section. Analysis of an official sample, by the department, shall be accepted as prima facie evidence by any court of competent jurisdiction.

(2) Enter any dealer's or seed labeling registrant's premises at all reasonable times in order to have access to seeds and to records. This includes the determination of the weight of packages and bulk shipments.

(3) Adopt and enforce regulations for certifying seeds, and shall fix and collect fees for such service. The director of the department may appoint persons as agents for the purpose of assisting in the certification of seeds.

(4) Adopt and enforce regulations for inspecting, grading, and certifying growing crops of seeds; inspect, grade, and issue certificates upon request; and fix and collect fees for such services.

(5) Make purity, germination and other tests of seed on request, and fix and collect charges for the tests made.

(6) Establish and maintain seed testing facilities, employ qualified persons, establish by rule special assessments as needed, and incur such expenses as may be necessary to carry out the provisions of this chapter.

(7) Adopt a list of the prohibited and restricted noxious weed seeds.

(8) Publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production.

(9) Deny, suspend, or revoke licenses, permits and certificates provided for in this chapter subsequent to a hearing, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, in any case in which the department finds that there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. [1981 c 297 § 14; 1969 c 63 § 37.]

Additional notes found at www.leg.wa.gov

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15.49.380 Dealer's license to distribute seeds. (1) No person shall distribute seeds without having obtained a dealer's license for each regular place of business: PROVIDED, That no license shall be required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant: PROVIDED FURTHER, That a license shall not be required of any grower selling seeds of his or her own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license shall cost one hundred twenty-five dollars, shall be issued through the master license system, shall bear the date of issue, shall expire on the master license expiration date, and shall be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration shall be considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed shall be through the master license system and shall include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter. [2012 c 61 § 1; 2010 c 8 § 6064; 1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

Master license system

*existing licenses or permits registered under, when: RCW 19.02.810.
to include additional licenses: RCW 19.02.110.*

Additional notes found at www.leg.wa.gov

15.49.390 Renewal of dealer's license. If an application for renewal of the dealer's license provided for in RCW 15.49.380, is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 25; 1969 c 63 § 39.]

Master license

*delinquency fee—Rate—Disposition: RCW 19.02.085.
expiration date: RCW 19.02.090.*

system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.49.400 Seed labeling permit. (1) No person shall label seed for distribution in this state without having obtained a seed labeling permit. The seed labeling registrant shall be responsible for the label and the seed contents. The application for a seed labeling permit shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty dollars per applicant. The application form shall include the name and address of the applicant, a label or label facsimile, and any other reasonable and practical information prescribed by the department. Upon approval, the department shall issue said permit to the applicant. All permits expire on January 31st of each year.

(2) If an application for renewal of the seed labeling permit provided for in this section is not filed prior to February 1st of any one year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the license shall be issued: PROVIDED,

That such additional fee shall not apply if the applicant furnishes an affidavit that he or she has not labeled seed for distribution in this state subsequent to the expiration of his or her prior permit. [2010 c 8 § 6065; 1969 c 63 § 40.]

15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation. (1) When the department has determined or has probable cause to suspect that any lot of seed or screenings is mislabeled and/or is being distributed in violation of this chapter or regulations adopted hereunder, it may issue and enforce a written or printed "stop sale, use or removal order" warning the distributor not to dispose of the lot of seed or screenings in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of seed or screenings so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained, the department may bring proceedings for condemnation.

(2) Any lot of seed or screenings not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the locality in which the seed or screenings are located. In the event the court finds the seed or screenings to be in violation of this chapter and orders the condemnation of said seed or screenings, such lot of seed or screenings shall be denatured, conditioned, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state: PROVIDED, That in no instance shall the court order such disposition of said seed or screenings without first having given the claimant an opportunity to apply to the court, within twenty days, for the release of said seed or screenings or for permission to condition or relabel it to bring it into compliance with this chapter. [1981 c 297 § 16; 1969 c 63 § 41.]

Additional notes found at www.leg.wa.gov

15.49.420 Damages precluded. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.49.410 if the court finds that there was probable cause for such action. [1969 c 63 § 42.]

15.49.460 Injunctions. The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any regulations promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1969 c 63 § 46.]

15.49.470 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance. All moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the seed fund on June 9, 1988, shall be transferred to that account within the agricultural local fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or

is later amended. [1988 c 254 § 2; 1987 c 202 § 176; 1975 1st ex.s. c 257 § 2; 1969 ex.s. c 199 § 13; 1969 c 63 § 47.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

15.49.480 Cooperation and agreements with other agencies. The department may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1969 c 63 § 48.]

15.49.900 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1969. [1969 c 63 § 49.]

15.49.920 Effective date—1969 c 63. The effective date of this 1969 act is July 1, 1969. [1969 c 63 § 51.]

15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal. The repeal of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 and the enactment of this 1969 act shall not be deemed to have repealed any regulations adopted under the provisions of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect immediately prior to such repeal and not inconsistent with the provisions of this 1969 act. For the purpose of this 1969 act, it shall be deemed that such rules have been adopted under the provisions of this 1969 act pursuant to chapter 34.05 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after July 1, 1969, shall be subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, concerning the adoption of rules. [1969 c 63 § 52.]

15.49.940 Short title. RCW 15.49.020 through 15.49.950 shall be known as the "Washington State Seed Act." [1969 c 63 § 53.]

15.49.950 Severability—1969 c 63. If any section or provision of this 1969 act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1969 c 63 § 55.]

Chapter 15.51 RCW BRASSICA SEED PRODUCTION

Sections

15.51.010	Findings—Purpose.
15.51.020	Definitions.
15.51.030	Brassica seed production districts—Grower's petition—Rules.
15.51.040	Brassica production agreements.
15.51.050	Rules.
15.51.060	Violation or threatened violation of chapter—Action to enjoin.

15.51.070 Application of chapter 34.05 RCW.
 15.51.900 Effective date—2007 c 181.
 15.51.901 Captions not law—2007 c 181.

15.51.010 Findings—Purpose. The legislature finds that the growing, production, or formation of seed from plants of the genus *Brassica* for the purpose of producing seed, oil, biofuel or associated by-products, commercial vegetables, forage, or cover crops is in the interest of the public welfare. The legislature finds that species, hybrids, varieties, and variations of plants of the genus *Brassica* have potential to form genetic crosses, particularly when they are grown in geographic proximity, and will, if not properly regulated, result in significant loss of quality, purity, and value in the seed produced.

The legislature finds that production of biofuel using *Brassica* seed crops, generally known as canola or rapeseed, can help citizens and businesses conserve energy and reduce the use of petroleum-based fuels, improve air and water quality, and create new industries and jobs for Washington citizens. The legislature also finds that Washington state offers conditions uniquely suited to the production of high quality, high value *Brassica* vegetable seed, and that the vegetable seed industry is a significant contributor to the diversity and economic viability of the agricultural community.

The purpose of chapter 181, Laws of 2007 is to provide for the orderly production of potentially incompatible varieties of *Brassica* seed crops. [2007 c 181 § 1.]

15.51.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "*Brassica*" means any plants in the genus *Brassica*.

(2) "*Brassica* seed crop" means any commercial production of any species, hybrid, or variety of the genus *Brassica* that results in pollen or seed formation. *Brassica* seed crop includes, but is not limited to, *Brassica* seeds grown for planting, and species generally known as rapeseed or canola, including *Brassica napus*, *Brassica rapa*, and *Brassica juncea*, grown for oil or biofuel and associated by-products. For purposes of this chapter, forage and cover crops from the genus *Brassica* are considered *Brassica* seed crops. Plants from the genus *Brassica* grown as vegetables for human or animal consumption such as cabbage, broccoli, rutabaga, and kohlrabi are not *Brassica* seed crops as long as they are not allowed to produce pollen or seed.

(3) "Department" means the state department of agriculture.

(4) "Director" means the director of the department or the director's authorized representative.

(5) "Grower" means a person who grows a *Brassica* seed crop within a *Brassica* seed production district or, for purposes of RCW 15.51.030, within a proposed *Brassica* seed production district.

(6) "Processor" means a person who commercially uses, sells, or processes a *Brassica* seed crop grown within a *Brassica* seed production district or, for purposes of RCW 15.51.030, within a proposed *Brassica* seed production district.

(7) "Volunteer and weed *Brassica* plants" means plants of the genus *Brassica* that arise from accidental or unintentional scattering or occurrence of seed. [2007 c 181 § 2.]

15.51.030 Brassica seed production districts—Grower's petition—Rules. Any grower or processor of a *Brassica* seed crop may submit a petition to the director requesting establishment of a *Brassica* seed production district. The petition must include proposed geographic boundaries of the district and the proposed types of regulations for designated *Brassica* seed crop species within the district. The petition must contain the signatures of at least ten growers or processors of affected *Brassica* seed crops grown within the boundaries of the proposed *Brassica* seed production district. If there are fewer than ten growers or processors of affected *Brassica* seed crops grown within the boundaries of the proposed district, then the applicant may submit a list of names and contact information for all *Brassica* seed crop growers and processors within the proposed district and a petition signed by at least fifty percent of these persons. In response to the petition, the director may adopt rules to establish *Brassica* seed production districts. [2007 c 181 § 3.]

15.51.040 Brassica production agreements. (1) Any person who wishes to conduct an activity otherwise prohibited within a *Brassica* seed production district must first enter into a *Brassica* production agreement with the director. Each *Brassica* production agreement shall be developed by the applicant and the director in consultation with an advisory committee comprised of at least three individuals appointed by the director, none of whom shall have a financial interest in the request for agreement or its outcome and at least one of whom shall be a grower in or processor of *Brassica* seed crops grown within the *Brassica* seed production district. The director shall not enter into any *Brassica* production agreement unless the director, in the exercise of his or her discretion, is satisfied that the agreement contains terms and conditions that are necessary and sufficient to mitigate reasonably possible risks to the economic well-being of growers within the *Brassica* seed production district from the proposed activity.

(2) The applicant or any grower or processor of a *Brassica* seed crop grown within the *Brassica* seed production district that would be affected by the *Brassica* production agreement may appeal, under RCW 34.05.570(4), the director's decision whether or not to enter into a *Brassica* production agreement. Any such appeal must be filed in the superior court of Thurston county or the county in which the activity to be allowed under the *Brassica* production agreement would occur. [2007 c 181 § 4.]

15.51.050 Rules. The director may adopt rules necessary to carry out the purpose and provisions of this chapter concerning, but not limited to:

- (1) *Brassica* seed production districts;
- (2) Notification of a designated central clearinghouse for growers to report their intention to plant a *Brassica* seed crop within a *Brassica* seed production district;
- (3) Isolation distances between *Brassica* seed crops within a *Brassica* seed production district;
- (4) Exclusion of designated *Brassica* seed crops within a *Brassica* seed production district, except under terms of a *Brassica* production agreement;
- (5) Control of volunteer and weed *Brassica* plants within a *Brassica* seed production district; and

(6) *Brassica* production agreements. [2007 c 181 § 5.]

15.51.060 Violation or threatened violation of chapter—Action to enjoin. The director or any grower or processor of a *Brassica* seed crop grown within a *Brassica* seed production district may bring an action to enjoin the violation or threatened violation of any provision of this chapter or its rules, or any *Brassica* production agreement entered into by an applicant and the director, in the superior court of Thurston county or the county in which the violation or threatened violation occurs or is about to occur. [2007 c 181 § 6.]

15.51.070 Application of chapter 34.05 RCW. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making. [2007 c 181 § 7.]

15.51.900 Effective date—2007 c 181. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 2007]. [2007 c 181 § 11.]

15.51.901 Captions not law—2007 c 181. Captions used in this act are not any part of the law. [2007 c 181 § 8.]

Chapter 15.53 RCW COMMERCIAL FEED

Sections

15.53.901	Definitions.
15.53.9012	Administration and administrative rules.
15.53.9013	Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or cancellation for non-compliance—Violation—Penalty—Rules.
15.53.9014	Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for noncompliance—Violation—Penalty.
15.53.9015	Responsible buyer status—Application—Removal—List.
15.53.9016	Labeling—Required information—Recordkeeping—Rules.
15.53.9018	Semiannual report required—Inspection fees—Reports—Late fees—Confidentiality.
15.53.902	Adulteration—Definition—Unlawful to distribute.
15.53.9022	Misbranding—Definition—Unlawful to distribute.
15.53.9024	Inspections of facilities, vehicles, equipment, etc.—Verification of records and procedures—Notice—Official samples—Warrants authorized.
15.53.9038	Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure.
15.53.904	Department's remedies for noncompliance—Classification of crimes—Prosecutions—Injunctions.
15.53.9042	Department to publish distribution information, production data, and analyses comparison.
15.53.9044	Disposition of moneys.
15.53.9046	Cooperation with other entities.
15.53.9048	Chapter is cumulative.
15.53.9054	Severability—1965 ex.s. c 31.
15.53.9056	Short title.

15.53.901 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Brand name" means a word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materi-

als are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole seeds or physically altered seeds are not chemically changed or not adulterated within the meaning of RCW 15.53.902, are exempt. The department by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials, and are not adulterated within the meaning of RCW 15.53.902.

(3) "Contract feeder" means a person who is an independent contractor and feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the instructions of the final purchaser.

(5) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(6) "Director" means the director of the department or a duly authorized representative.

(7) "Distribute" means to offer for sale, sell, exchange or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(8) "Distributor" means a person who distributes.

(9) "Drug" means an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than people and articles, other than feed intended to affect the structure or a function of the animal body.

(10) "Facility" means any place where a commercial feed is manufactured, repackaged, sold, transloaded, or stored for later distribution.

(11) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(12) "Final purchaser" means a person who purchases commercial feed to feed to animals in his or her care.

(13) "Initial distributor" means a person who first distributes a commercial feed in or into this state.

(14) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(15) "Labeling" means all labels and other written, printed, or graphic matter: (a) Upon a commercial feed or any of its containers or wrappers; or (b) accompanying such commercial feed.

(16) "Licensee" means a person who holds a commercial feed license as prescribed in this chapter.

(17) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(18) "Medicated feed" means a commercial feed containing a drug or other medication.

(19) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(20) "Official sample" means a sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024 (3), (5), or (6).

(21) "Percent" or "percentage" means percentage by weight.

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

(23) "Pet" means a domesticated animal normally maintained in or near the household of the owner of the pet.

(24) "Pet food" means a commercial feed prepared and distributed for consumption by pets.

(25) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(26) "Responsible buyer" means a licensee who is not the final purchaser of a commercial feed and has agreed to be responsible for reporting tonnage and paying inspection fees for all commercial feeds they distribute.

(27) "Retail" means to distribute to the final purchaser.

(28) "Sell" or "sale" includes exchange.

(29) "Specialty pet" means a domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(30) "Specialty pet food" means a commercial feed prepared and distributed for consumption by specialty pets.

(31) "Ton" means a net weight of two thousand pounds avoirdupois.

(32) "Transload" means to transfer commercial feed from one carrier to another carrier without processing or blending the ingredients, for example, transferred from rail car to trucks or shipping containers.

(33) "Quantity statement" means the net weight (mass), net volume (liquid or dry), or count. [2005 c 18 § 1; 1995 c 374 § 33; 1982 c 177 § 1; 1975 1st ex.s. c 257 § 3; 1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 11 §§ 15.53.010 through 15.53.900; 1953 c 80 §§ 1-35.]

Additional notes found at www.leg.wa.gov

15.53.9012 Administration and administrative rules.

(1) The department shall administer, enforce and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. In adopting such rules, the director shall consider (a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and (b) any regulation adopted pursuant to the authority of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301, et seq.), if the department would have the authority under this chapter to adopt the regulations. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act).

(2) The director when adopting rules in respect to the feed industry shall consult with affected parties, such as manufacturers and distributors of commercial feed and any final rule adopted shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and condition of the industry and shall be for the purpose of promoting the well-being of the members of the feed industry as well as the well-being of the purchasers

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and users of feed and for the general welfare of the people of the state. [1995 c 374 § 34; 1965 ex.s. c 31 § 3.]

Additional notes found at www.leg.wa.gov

15.53.9013 Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or cancellation for noncompliance—Violation—Penalty—Rules.

(1) Except as provided under subsection (2) of this section, any person: (a) Who manufactures a commercial feed in this state; (b) who distributes a commercial feed in or into this state; or (c) whose name appears on a commercial feed label as guarantor, must first obtain from the department a commercial feed license for each facility that distributes in or into this state.

(2) The following persons are exempt from the requirement of a commercial feed license:

(a) Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for reporting and paying the inspection fee due under chapter 18, Laws of 2005;

(b) Any person distributing only pet food or specialty pet food;

(c) Any person distributing food processing by-products from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants, except that the distribution of by-products or products of sugar refineries are not exempt from the requirement of a commercial feed license; and

(d) Any person distributing bona fide experimental feed on which accurate records and experimental programs are maintained.

(3) Application for a commercial feed license must be made annually on forms provided by the department and must be accompanied by a fee of fifty dollars.

(4) The commercial feed license expires on June 30th of each year. The application and fee for a commercial feed license renewal is due July 1st of each year. If a completed application and appropriate fee is not received by July 1st, a late renewal fee of fifty dollars per facility will be assessed in addition to the license fee and must be paid by the applicant before the renewal license is issued. A late renewal fee will not apply if the applicant furnishes an affidavit that he or she has not distributed a commercial feed subsequent to the expiration of his or her prior license. The assessment of the late renewal fee will not prevent the department from taking other action as provided for in this chapter.

(5) An application for a commercial feed license must include:

(a) The name and mailing address of the applicant;

(b) The physical address of the facility;

(c) The name, contact information, and signature of the applicant; and

(d) Other information required by the department by rule.

(6) The department may deny a license application if the applicant is not in compliance with this chapter or applicable rules, and may cancel a license if the licensee is not in compliance with this chapter or applicable rules. Prior to denial or cancellation of a license, the department shall provide

notice and an opportunity to correct deficiencies. If an applicant or licensee fails to correct the deficiency, the department shall deny or cancel the license. If aggrieved by the decision, the applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(7) Notwithstanding the payment of a late renewal fee, it is a violation to distribute a commercial feed by an unlicensed person, and nothing in this chapter prevents the department from imposing a penalty authorized by this chapter for the violation.

(8) The department may under conditions specified by rule, request submission of labels and labeling in order to determine compliance with the provisions of this chapter. [2005 c 18 § 2; 1995 c 374 § 35.]

Additional notes found at www.leg.wa.gov

15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for noncompliance—Violation—Penalty. (1) A person may not distribute in this state a pet food or specialty pet food that has not been registered by the department.

(2) All applications for registration must be submitted on forms provided by the department and must include:

- (a) The name and mailing address of the applicant;
- (b) The physical address of the applicant;
- (c) The name, contact information, and signature of the applicant;
- (d) Indication of the package sizes distributed for each product; and
- (e) Other information required by the department by rule.

(3) An application for registration must be accompanied by a label and other applicable printed matter describing the product and the following fees:

- (a) Twenty-two dollars per product for those products distributed only in packages of ten pounds or more;
- (b) Ninety dollars per product for those products distributed in packages of less than ten pounds; or
- (c) Ninety dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) A distributor is not required to register a pet food or specialty pet food that is already registered under this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which it was designed.

(7) The department may deny registration of any pet food or specialty pet food not in compliance with this chapter and its rules. The department may cancel any registration subsequently found to be not in compliance with this chapter

and its rules. Prior to denial or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food must be notified of the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department will deny or cancel the registration. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) Application for renewal of registration is due July 1st of each registration period. If an application for renewal is not received by the department by the due date, a late fee of twenty dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. A late fee will not apply if the applicant furnishes an affidavit that he or she has not distributed this feed subsequent to the expiration of the prior registration. Payment of a late fee does not prevent the department from imposing a penalty authorized by this chapter for the violation. [2005 c 18 § 4; (2005 c 18 § 3 expired July 1, 2006); 1995 c 374 § 36; 1993 sp.s. c 19 § 2; 1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

Effective date—2005 c 18 § 4: "Section 4 of this act takes effect July 1, 2006." [2005 c 18 § 12.]

Effective date—2005 c 18 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 18 § 11.]

Expiration date—2005 c 18 § 3: "Section 3 of this act expires July 1, 2006." [2005 c 18 § 13.]

Additional notes found at www.leg.wa.gov

15.53.9015 Responsible buyer status—Application—Removal—List. (1) To become a responsible buyer, a commercial feed licensee must apply for responsible buyer status on forms provided by the department. The application must include:

- (a) The name and mailing address of the licensee;
- (b) The physical address of the licensee;
- (c) The name, contact information, and signature of the applicant; and
- (d) Other information required by the department by rule.

(2) To be removed from responsible buyer status, the licensee must notify the department in writing. The licensee is not released from responsible buyer status until the department notifies the licensee in writing of such release.

(3) The department will maintain a current list of all responsible buyers and make the list available on request. [2005 c 18 § 5.]

15.53.9016 Labeling—Required information—Recordkeeping—Rules. (1) Any commercial feed, except a customer-formula feed, distributed in this state must be accompanied by a legible label bearing the following information:

- (a) The product name and the brand name, if any, under which the commercial feed is distributed.
- (b) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be

determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(c) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(d) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(e) Adequate directions for use for all commercial feeds containing drugs and for all such other commercial feeds as the department may require by rule as necessary for their safe and effective use.

(f) Those precautionary statements the department by rule determines are necessary for the safe and effective use of the commercial feed.

(g) The net weight as required under chapter 19.94 RCW.

(2) When a commercial feed, except a customer-formula feed, is distributed in this state in bags or other containers, the label must be placed on or affixed to the container; when a commercial feed, except a customer-formula feed, is distributed in bulk the label must accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer-formula feed must be labeled by shipping document. The shipping document, which is to accompany delivery and be supplied to the purchaser at the time of delivery, must bear the following information:

(a) Name and address of the manufacturer;

(b) Name and address of the purchaser;

(c) Date of delivery;

(d) Product name and the net weight as required under chapter 19.94 RCW;

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use;

(f) The directions for use and precautionary statements as required by subsection (1)(e) and (f) of this section; and

(g) If a drug containing product is used:

(i) The purpose of the medication (claim statement);

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules established by the department.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the customer formula feed must be on file at the plant producing the product. These records must be kept on file for one year after the last sale. This information must be made available to the purchaser, the dealer making the sale, and the department on request. [2005 c 18 § 6; 1995 c 374 § 37; 1965 ex.s. c 31 § 5.]

Additional notes found at www.leg.wa.gov

15.53.9018 Semiannual report required—Inspection fees—Reports—Late fees—Confidentiality. (1) Every registrant or licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed distributed in or into this state. The

report must be filed regardless of the amount of feed distributed or inspection fees owed. The report must include:

(a) The name and mailing address of the registrant or licensee;

(b) The physical address of the registrant or licensee;

(c) The name, contact information, and signature of the person filing the report;

(d) The total number of tons distributed in or into this state;

(e) The total number of tons on which the registrant or licensee is paying;

(f) If the registrant or licensee is not paying inspection fees on all commercial feed he or she distributed in or into this state, information regarding the registrants or licensees that are responsible for paying the inspection fees and the number of tons involved; and

(g) Other information required by the department by rule.

(2) Except as provided in subsections (3) through (5) of this section, each initial distributor or responsible buyer must pay to the department an inspection fee on all commercial feed distributed by such person during the reporting period. The inspection fee must accompany the report required in subsection (1) of this section. The inspection fee shall be not less than four cents nor more than twelve cents per ton as prescribed by the department by rule. These fees shall be used for enforcement and administration of this chapter and its rules.

(3) The initial distributor is not required to pay an inspection fee for commercial feed he or she distributed to a responsible buyer.

(4) In a situation where a responsible buyer is distributing to another responsible buyer, the inspection fee must be paid by the last responsible buyer to distribute the commercial feed.

(5) The initial distributor or responsible buyer is not required to pay an inspection fee for: (a) Pet food and specialty pet food distributed in packages weighing less than ten pounds; (b) distribution of bona fide experimental feeds on which accurate records and experimental programs are maintained; (c) commercial feed distributed to points outside this state; and (d) food processing by-products from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants.

(6) Tonnage will be reported and inspection fees will be paid on (a) by-products or products of sugar refineries; and (b) materials used in the preparation of pet foods and specialty pet food.

(7)(a) Each person made responsible by this chapter for filing a report or paying inspection fees must do so according to the following schedule:

(i) For the period January 1st through June 30th of each year, the report and inspection fees are due on July 31st of that year; and

(ii) For the period July 1st through December 31st of each year, the report and inspection fees are due on January 31st of the following year.

(b) If a complete report is not received by the due date or the appropriate inspection fees are not received by the due date, the person responsible for filing the report or paying the

inspection fee must pay a late fee equal to fifteen percent of the inspection fee owed or fifty dollars, whichever is greater.

(c) The department may cancel the registration of a person's commercial feed or may cancel a person's commercial feed license if that person fails to pay the late fee. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(8) If inspection fees are owed, the minimum inspection fee is twelve dollars and fifty cents.

(9) For the purpose of verifying the accuracy of reports and payment of appropriate inspection fees, the department may examine, at reasonable times, a registrant's or licensee's distribution records and may require each registrant or licensee to maintain records or file additional reports. These records must be maintained in usable condition by the registrant or licensee for a period of three years unless by rule this retention period is extended and must be submitted to the department upon request.

(10) The report required by subsection (1) of this section shall not be a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from public disclosure under chapter 42.56 RCW, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure under chapter 42.56 RCW. However, this subsection does not prevent the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(11) Any commercial feed obtained by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees. [2006 c 209 § 2; 2005 c 18 § 7; 1995 c 374 § 38; 1982 c 177 § 3; 1981 c 297 § 17; 1979 c 91 § 1; 1975 1st ex.s. c 257 § 5; 1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

Effective date—2006 c 209: See RCW 42.56.903.

Additional notes found at www.leg.wa.gov

15.53.902 Adulteration—Definition—Unlawful to distribute. It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(4) If it is ruminant feed and is, bears, or contains any animal protein prohibited in ruminant feed that is unsafe within the meaning of federal regulations promulgated under section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(5) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal food, drug, and cosmetic act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act; or

(6) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 721 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 379e); or

(7) If it is, or it bears or contains any new animal drug that is unsafe within the meaning of section 512 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 360b); or

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

(9) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(10) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess. In adopting such rules, the department shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the department determines that they are not appropriate to the conditions that exist in this state; or

(11) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW and rules adopted thereunder. [2012 c 25 § 2; 2005 c 40 § 1; 1995 c 374 § 39; 1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

Additional notes found at www.leg.wa.gov

15.53.9022 Misbranding—Definition—Unlawful to distribute. It shall be unlawful for any person to distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is distributed under the name of another commercial feed;
- (3) If it is not labeled as required in RCW 15.53.9016 and in rules prescribed under this chapter;
- (4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed or feed ingredient, unless such commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rule of the department. In the adopting of such rules the department may consider commonly accepted definitions such as those issued by nationally recognized associations or groups of feed control officials;
- (5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (6) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. [1995 c 374 § 40; 1965 ex.s. c 31 § 8.]

Additional notes found at www.leg.wa.gov

15.53.9024 Inspections of facilities, vehicles, equipment, etc.—Verification of records and procedures—Notice—Official samples—Warrants authorized. (1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether an operation is subject to such provisions, inspectors duly designated by the director, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (a) to enter, during normal business hours, any facility within the state in which commercial feeds are manufactured, transloaded, processed, packed, distributed, or held for distribution, or to enter a vehicle being used to transport or hold such feeds; and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner, the facilities, or vehicles and all pertinent equipment, finished and unfinished materials, containers, labeling, and records. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with this chapter and its rules.

(2) A separate notice shall be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the inspector or employee making such inspection of a facility or vehicle has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(2012 Ed.)

(4) If the owner of a facility or vehicle described in subsection (1) of this section, or his or her agent, refuses to admit the director or his or her agent to inspect in accordance with subsections (1) and (2) of this section, the director or his or her agent is authorized to obtain from any court of competent jurisdiction a warrant directing such owner or his or her agent to submit the premises described in the warrant to inspection.

(5) For the enforcement of this chapter, the director or his or her duly assigned agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser, if known. If the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the department shall furnish to the registrant or licensee a portion of the sample concerned. If referee analysis is requested, a portion of the official sample shall be furnished by the department and shall be sent directly to an independent lab agreed to by all parties.

(8) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(20) and obtained and analyzed as provided for in this section.

(9) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [2005 c 18 § 8; 1995 c 374 § 41; 1965 ex.s. c 31 § 9.]

Prosecutions, official analysis as evidence: RCW 15.53.904.

Additional notes found at www.leg.wa.gov

15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure. (1) When the department has reasonable cause to believe that any lot of commercial feed is adulterated or misbranded or is being distributed in violation of this chapter or any rules hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, or "stop sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department. The department shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, parties may agree to an alternative disposition in writing or the department may institute condemnation proceedings in a court of competent jurisdiction.

(2) Any lot of commercial feed not in compliance with the provisions and rules is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed

of in any manner consistent with the quality of the commercial feed and the laws of the state. The court shall first give the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter. [1995 c 374 § 42; 1982 c 177 § 5; 1975 1st ex.s. c 257 § 7; 1965 ex.s. c 31 § 16.]

Additional notes found at www.leg.wa.gov

15.53.904 Department's remedies for noncompliance—Classification of crimes—Prosecutions—Injunctions. (1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor as provided in RCW 9A.20.021. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Any person convicted of intentionally violating RCW 15.53.902(4) or the rules issued thereunder is guilty of a gross misdemeanor as provided in RCW 9A.20.021.

(3) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present the distributor's view in writing or orally to the department.

(5) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [2005 c 40 § 2; 1965 ex.s. c 31 § 17.]

Analysis of official sample as evidence: RCW 15.53.9024.

15.53.9042 Department to publish distribution information, production data, and analyses comparison. The department shall publish at least annually, in such forms as it may deem proper, information concerning the distribution of commercial feed, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feed within the state as compared with the analyses guaranteed on the label or as calculated from the invoice data for customer-formula feeds: PROVIDED, That the information concerning production and use of commercial feeds shall not disclose the operations of any person. [1995 c 374 § 43; 1965 ex.s. c 31 § 18.]

Additional notes found at www.leg.wa.gov

15.53.9044 Disposition of moneys. All moneys collected under this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. [2005 c 18 § 9; 1988 c 254 § 5; 1975 1st ex.s. c 257 § 8; 1965 ex.s. c 31 § 19.]

Additional notes found at www.leg.wa.gov

15.53.9046 Cooperation with other entities. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out the purpose and provisions of this chapter. [1965 ex.s. c 31 § 24.]

15.53.9048 Chapter is cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 ex.s. c 31 § 20.]

15.53.9054 Severability—1965 ex.s. c 31. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1965 ex.s. c 31 § 27.]

15.53.9056 Short title. This chapter shall be known as the "Washington Commercial Feed Law." [1965 ex.s. c 31 § 1.]

Chapter 15.54 RCW

FERTILIZERS, MINERALS, AND LIMES

Sections

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15.54.950	Short title.
15.54.960	Severability—1967 ex.s. c 22.

Crop liens: Chapter 60.11 RCW.

15.54.265 Intent—1998 c 36. (1) The legislature intends to strengthen the state's fertilizer adulteration laws to protect human health and the environment by:

- (a) Ensuring that all fertilizers meet standards for allowable metals;
- (b) Allowing fertilizer purchasers and users to know about the contents of fertilizer products; and
- (c) Clarifying the department of ecology's oversight authority over waste-derived fertilizers.

(2) The legislature intends to provide better information to the public on fertilizers, soils, and potential health effects by authorizing additional studies on plant uptake of metals and levels of dioxins in soils and products. [1998 c 36 § 1.]

Additional notes found at www.leg.wa.gov

15.54.270 Definitions. (Effective until January 1, 2013.) Terms used in this chapter have the meaning given to them in this chapter unless the context clearly indicates otherwise.

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.

(6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

(7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(8) "Director" means the director of the department of agriculture.

(9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

(10) "Distributor" means a person who distributes.

(11) "Fertilizer material" means a commercial fertilizer that either:

(a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;

(b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	.....	percent
Available phosphoric acid (P ₂ O ₅)	....	percent
Soluble potash (K ₂ O)	.....	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO₄·2H₂O) shall be given along with the percentage of total sulfur.

(14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

(18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

(19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(24) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(27) "Percent" or "percentage" means the percentage by weight.

(28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

(29) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(31) "Ton" means the net weight of two thousand pounds avoirdupois.

(32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(34) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. [1998 c 36 § 2; 1997 c 427 § 1; 1993 c 183 § 1; 1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Additional notes found at www.leg.wa.gov

15.54.270 Definitions. (Effective January 1, 2013.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.

(6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

(7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(8) "Director" means the director of the department of agriculture.

(9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

(10) "Distributor" means a person who distributes.

(11) "Fertilizer material" means a commercial fertilizer that either:

(a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;

(b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule

adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	.....	percent
Available phosphoric acid (P ₂ O ₅)	....	percent
Soluble potash (K ₂ O)	.....	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO₄·2H₂O) shall be given along with the percentage of total sulfur.

(14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

(18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

(19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(24) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(27) "Percent" or "percentage" means the percentage by weight.

(28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

(29) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(31) "Ton" means the net weight of two thousand pounds avoirdupois.

(32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33)(a) "Turf" means land, including residential property, commercial property, and publicly owned land, which is planted in closely mowed, managed grass.

(b) "Turf" does not include pasture land, land used to grow grass for sod, or any other land used for agricultural production or residential vegetable or flower gardening.

(34) "Turf fertilizer" means a commercial fertilizer that is labeled for use on turf.

(35) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(36) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. [2011 c 73 § 1; 1998 c 36 § 2; 1997 c 427 § 1; 1993 c 183 § 1; 1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 73: "This act takes effect January 1, 2013." [2011 c 73 § 5.]

Additional notes found at www.leg.wa.gov

15.54.275 Bulk fertilizer distribution license. (1) No person may distribute a bulk fertilizer in this state until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes bulk fertilizer in Washington state. An application for each location shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of twenty-five dollars per location. The license shall expire on the master license expiration date.

(2) An application for license shall include the following:

- (a) The name and address of licensee.
- (b) Any other information required by the department by rule.

(3) The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to the master license expiration date, a delinquency fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license. [1998 c 36 § 3; 1993 c 183 § 2.]

Additional notes found at www.leg.wa.gov

15.54.325 Commercial fertilizer registration—Required for distribution—Application—Fees. (1) No person may distribute in this state a commercial fertilizer until it has been registered with the department by the producer, importer, or packager of that product.

(2) An application for registration must be made on a form furnished by the department and must include the following:

- (a) The product name;
- (b) The brand and grade;
- (c) The guaranteed analysis;
- (d) Name, address, and phone number of the registrant;
- (e) A label for each product being registered;
- (f) Identification of those products that are (i) waste-derived fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer materials containing phosphate;

(g) The concentration of each metal, for which standards are established under RCW 15.54.800, in each product being registered, unless the product is (i) anhydrous ammonia or a solution derived solely from dissolving anhydrous ammonia in water, (ii) a customer-formula fertilizer containing only registered commercial fertilizers, or (iii) a packaged commercial fertilizer whose plant nutrient content is present in the form of a single chemical compound which is registered in compliance with this chapter and the product is not blended

with any other material. The provisions of (g)(i) of this subsection do not apply if the anhydrous ammonia is derived in whole or in part from waste such that the fertilizer is a "waste-derived fertilizer" as defined in RCW 15.54.270. Verification of a registration relied on by an applicant under (g)(iii) of this subsection must be submitted with the application;

(h) If a waste-derived fertilizer or micronutrient fertilizer, information to ensure the product complies with chapter 70.105 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.; and

(i) Any other information required by the department by rule.

(3) All companies planning to mix customer-formula fertilizers shall include the statement "customer-formula grade mixes" under the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) An application for registration must be accompanied by a fee of fifty dollars for each product.

(6) Application for renewal of registration is due July 1st of each registration period. If an application for renewal is not received by the department by the due date, a late fee of ten dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. A late fee does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of the prior registration. Payment of a late fee does not prevent the department from taking any action authorized by this chapter for the violation. [2008 c 292 § 1. Prior: 1999 c 383 § 1; 1999 c 382 § 1; 1998 c 36 § 4; 1993 c 183 § 3.]

Additional notes found at www.leg.wa.gov

15.54.330 Commercial fertilizer registration—Application review—Labels and guarantees. (1) The department shall examine the commercial fertilizer product registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular commercial fertilizer products shall be registered by the department and a certificate of registration shall be issued to the applicant.

(2) In reviewing the commercial fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations, product review evaluations, or other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.

(3) In determining whether approval of a labeling statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement

describing the methodology of laboratory analysis utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.

(4) Before registering a waste-derived fertilizer or micronutrient fertilizer, the department shall obtain written approval from the department of ecology as provided in RCW 15.54.820. Once a waste-derived fertilizer or micronutrient fertilizer has been approved by the department of ecology, its subsequent use in another product during that registration cycle shall not require department of ecology review. This subsection shall apply to new and renewal registration applications for periods beginning July 1, 1999, and thereafter. [1999 c 383 § 2; 1998 c 36 § 5; 1993 c 183 § 4; 1967 ex.s. c 22 § 21.]

Additional notes found at www.leg.wa.gov

15.54.340 Labeling requirements. (1) Any packaged commercial fertilizer distributed in this state that is not a customer-formula fertilizer must have placed on or affixed to the package a label stating in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;
- (c) The guaranteed analysis;
- (d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated;
- (e) Any information required under WAC 296-307-560 through 296-307-56050;
- (f) A statement, established by rule, referring persons to the department's Uniform Resource Locator (URL) internet address where data regarding the metals content of the product is located; and
- (g) Other information as required by the department by rule.

(2) Any commercial fertilizer that is distributed in bulk in this state that is not a customer-formula fertilizer must be accompanied by a written or printed statement that includes the information required by subsection (1) of this section and must be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer in this state must be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the name and amount of each ingredient; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

(4) Each delivery of a customer-formula fertilizer must contain the ingredients specified by the purchaser. A record of the invoice or statement of each delivery must be kept by the registrant or licensee for twelve months and must be available to the department upon request. [2008 c 292 § 2; 2003 c 15 § 1; 1999 c 381 § 1; 1998 c 36 § 6; 1993 c 183 § 5; 1987 c 45 § 12; 1967 ex.s. c 22 § 22.]

Effective date—2003 c 15 § 1: "Section 1 of this act takes effect January 1, 2004." [2003 c 15 § 2.]

Additional notes found at www.leg.wa.gov

15.54.350 Inspection fees. (1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants or nonlicensees an inspection fee of fifteen cents per ton of lime and thirty cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) Distribution of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant or licensee who distributes to a nonregistrant or nonlicensee is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer. [1993 c 183 § 6; 1987 c 45 § 13; 1981 c 297 § 18; 1975 1st ex.s. c 257 § 9; 1967 ex.s. c 22 § 23.]

Additional notes found at www.leg.wa.gov

15.54.362 Reports—Inspection fees—Late fees—Confidentiality—Penalty—Exception. (1) Every registrant or licensee who distributes commercial fertilizer in this state must file a semiannual report on forms provided by the department stating the number of net tons of each commercial fertilizer distributed in this state.

(a) For the period January 1st through June 30th of each year, the report is due on July 31st of that year; and

(b) For the period July 1st through December 31st of each year, the report is due on January 31st of the following year.

Upon permission of the department, a person distributing in the state less than one hundred tons for each six-month period during any annual reporting period of July 1st through June 30th may submit an annual report on a form provided by the department that is due on the July 31st following the period. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state must include the inspection fees with each semiannual or annual report. If in an annual reporting period a registrant or licensee distributes less than eighty-three tons of commercial fertilizer or less than one hundred sixty-seven tons of commercial lime or equivalent combination of the two, the registrant or licensee must pay the minimum inspection fee of twenty-five dollars.

(3) The department may, upon request, require registrants or licensees to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4)(a) If a complete report is not received by the due date, the person responsible for filing the report must pay a late fee of twenty-five dollars.

(b) If the appropriate inspection fees are not received by the due date, the person responsible for paying the inspection fee must pay a late fee equal to ten percent of the inspection fee owed or twenty-five dollars, whichever is greater.

(c) Payment of a late fee does not prevent the department from taking any other action authorized by this chapter for the violation.

(5) It is a misdemeanor for any person to divulge any information provided under this section that would reveal the

business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is authorized and which shall be as an action at law in the name of the director of the department. [2008 c 292 § 3; 1993 c 183 § 7; 1987 c 45 § 14.]

Additional notes found at www.leg.wa.gov

15.54.370 Official samples—Inspection, analysis, testing—Right of entry. (1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in RCW 15.54.270 and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the registrant or licensee and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the registrant or licensee a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1993 c 183 § 8; 1987 c 45 § 16; 1967 ex.s. c 22 § 25.]

Additional notes found at www.leg.wa.gov

15.54.380 Penalties for deficiencies upon analysis of commercial fertilizers—Appeal—Disposition of penalties. (1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is

guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the commercial value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) of this subsection, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant or licensee. The department shall deposit the amount of the penalty into an account with the agricultural local fund.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) of this section.

(4) The civil penalties payable in subsections (1) and (2) of this section shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant or licensee paying said civil penalties. [1998 c 36 § 7; 1993 c 183 § 9; 1987 c 45 § 17; 1967 ex.s. c 22 § 26.]

Additional notes found at www.leg.wa.gov

15.54.390 Determination and publication of commercial values—Use in assessment of penalty payments. For the purpose of determining the commercial value to be applied under the provisions of RCW 15.54.380, the department shall determine and publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state. The values so determined and published shall be used in determining and assessing penalty payments and shall be established by rule. [1987 c 45 § 18; 1967 ex.s. c 22 § 27.]

Additional notes found at www.leg.wa.gov

15.54.400 Restrictions on sale—Minimum percentages. No superphosphate containing less than eighteen percent of available phosphoric acid may be sold or offered for sale in this state. Specialty fertilizers, except manipulated animal and vegetable manures, guaranteeing less than five percent total plant food shall contain on the label specific directions for use, and prior to registration, the department may require proof of the efficacy of the product when used as directed. [1987 c 45 § 19; 1967 ex.s. c 22 § 28.]

Additional notes found at www.leg.wa.gov

15.54.412 Misbranding. No person may distribute misbranded commercial fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(1) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) If it is distributed under the name of another fertilizer product;

(3) If its labeling bears any reference to registration under this chapter unless such reference is required by rule under this chapter;

(4) If any word, statement, or other information, required by this chapter or rules adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, design, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) If it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by the department by rule. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. [1987 c 45 § 20.]

Additional notes found at www.leg.wa.gov

15.54.414 Adulteration. No person may distribute an adulterated commercial fertilizer. A commercial fertilizer is adulterated:

(1) If it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling;

(3) If it contains unwanted viable seed; or

(4) If the concentration of any nonnutritive constituent in a representative sample of commercial fertilizer exceeds the maximum concentration stated on the registration application or on the label. [1998 c 36 § 8; 1993 c 183 § 10; 1987 c 45 § 21.]

Additional notes found at www.leg.wa.gov

15.54.420 Unlawful acts. It shall be unlawful for any person to:

(1) Distribute an adulterated or misbranded commercial fertilizer;

(2) Fail, refuse, or neglect to place upon or attach to each package of distributed commercial fertilizer a label containing all of the information required by this chapter;

(3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter;

(4) Distribute a commercial fertilizer product which has not been registered with the department;

(5) Distribute bulk fertilizer without holding a license to do so;

(6) Refuse or neglect to keep and maintain records, or to make reports when and as required; or

(7) Make false or fraudulent applications, records, invoices, or reports. [1998 c 36 § 9; 1993 c 183 § 11; 1987 c 45 § 22; 1967 ex.s. c 22 § 30.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

15.54.430 Publication of distribution information, analyses results. The department shall publish at least annually and in such form as it may deem proper (1) information concerning the distribution of commercial fertilizers and (2) results of analyses based on official samples as compared with the analyses guaranteed. [1967 ex.s. c 22 § 31.]

15.54.433 Fertilizer database—Public availability—Biennial report to legislature. (1) The department shall maintain a fertilizer database that includes the information required for registration under RCW 15.54.325 and 15.54.330.

(2) Except for confidential information under RCW 15.54.362 regarding fertilizer tonnages distributed in the state, information in the fertilizer database must be made available to the public upon request.

(3) The department, and the department of ecology in consultation with the department of health, shall biennially prepare a report to the legislature presenting information on levels of nonnutritive substances in fertilizers and the results of any agency testing of products. The first report must be provided to the legislature by December 1, 1999.

(4) The department shall post on the internet the information contained in applications for fertilizer registration. [2008 c 292 § 4; 1998 c 36 § 21.]

Additional notes found at www.leg.wa.gov

15.54.436 Cancellation of license to distribute or of registration—Refusal to register if fraudulent or deceptive practices used—Opportunity for hearing. The department may cancel the license to distribute commercial fertilizer or registration of any commercial fertilizer product or refuse to license a distributor or register any commercial fertilizer product as provided in this chapter due to:

(1) An incomplete or insufficient license or registration application;

(2) The misbranding or adulteration of a commercial fertilizer; or

(3) A violation of this chapter or rules adopted under this chapter.

If the department cancels or refuses to renew an existing license or registration due to the misbranding or adulteration of a commercial fertilizer or due to a violation of this chapter or a rule adopted hereunder, the licensee/registrant or applicant may request a hearing as provided for in chapter 34.05 RCW. [1998 c 36 § 10; 1993 c 183 § 12; 1987 c 45 § 24.]

Additional notes found at www.leg.wa.gov

15.54.440 "Stop sale," "stop use," or "withdrawal from distribution" order, when issued—Release—Associated costs. (1) Commercial fertilizers that are not registered in Washington state or that fail to meet the Washington standards for total metals pose an emergency situation because they may contain certain metals at levels which are harmful to Washington soils and plants and may contain substances which are harmful to the public without its knowledge. Commercial fertilizers that are not registered or that fail to meet the Washington standards for total metals are subject to immediate stop sale, stop use, or withdrawal from distribution in this state and seizure, disposal, or both.

(2) The department may issue and enforce a written "stop sale," "stop use," or "withdrawal from distribution" order to the distributor, owner, or custodian of any lot of commercial fertilizer to hold the commercial fertilizer at a designated place when the department has reasonable cause to believe such fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter.

(3) The department may issue and enforce a written immediate "stop sale," "stop use," or "withdrawal from distribution" order to any distributor, owner, or custodian of commercial fertilizer in the state for any commercial fertilizer that:

(a) Is not registered in Washington state; or

(b) According to the department, fails to meet the Washington standards for total metals, as established in RCW 15.54.800 or the rules adopted under this chapter.

(4) The department shall release the commercial fertilizer stopped or withdrawn under subsection (2) or (3) of this section when the distributor, owner, or custodian has complied with the provisions of this chapter and the rules adopted under it and the department has issued a written release order. If compliance is not or cannot be obtained, the department may institute proceedings under RCW 15.54.450 or may agree in writing with the distributor, owner, or custodian of the commercial fertilizer to an alternative disposition of the commercial fertilizer.

(5) All costs associated with any "stop sale," "stop use," or "withdrawal from distribution" incurred by the distributor, owner, or custodian of a commercial fertilizer are the responsibility of the distributor, owner, or custodian. [1999 c 383 § 3; 1987 c 45 § 23; 1967 ex.s. c 22 § 32.]

Additional notes found at www.leg.wa.gov

15.54.450 Noncompliance—Seizure—Disposition—Associated costs. (1) Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial fertilizer is located.

(2) Any commercial fertilizer that is not registered in the state or that fails to meet the Washington standards for total metals is subject to seizure on complaint of the department in the name of the state to Thurston county superior court or other court of competent jurisdiction.

(3) In the event the court finds, upon application by the department under subsection (1) or (2) of this section, that a commercial fertilizer violates this chapter or the rules adopted under it and orders the condemnation of the commercial fertilizer, the commercial fertilizer shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: PROVIDED, That in no instance shall the disposition of the commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial fertilizer or for permission to process or relabel the commercial fertilizer to bring it into compliance with this chapter and the rules adopted under it.

(4) All costs associated with disposal are the responsibility of the distributor, owner, or custodian of the commercial fertilizer unless such a distributor, owner, or custodian is the consumer or is a person whose role as a distributor, owner, or

custodian of the fertilizer is only that of a transporter of the fertilizer. Such disposal costs shall not be the responsibility of the consumer or such a transporter of the commercial fertilizer. [1999 c 383 § 4; 1967 ex.s. c 22 § 33.]

Additional notes found at www.leg.wa.gov

15.54.460 Damages from administrative action, stop sales or seizures. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.54.440 and 15.54.450 if the court finds that there was probable cause for such action. [1967 ex.s. c 22 § 34.]

15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions. (Effective until January 1, 2013.) (1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a commercial fertilizer product or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1998 c 36 § 11; 1993 c 183 § 13; 1967 ex.s. c 22 § 35.]

Additional notes found at www.leg.wa.gov

15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions. (Effective January 1, 2013.) (1) Except for violations of RCW 15.54.500, any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a commercial fertilizer product or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prose-

cution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [2011 c 73 § 3; 1998 c 36 § 11; 1993 c 183 § 13; 1967 ex.s. c 22 § 35.]

Effective date—2011 c 73: See note following RCW 15.54.270.

Additional notes found at www.leg.wa.gov

15.54.474 Penalty—Failure to comply with chapter or rule. Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section. [1998 c 36 § 12; 1987 c 45 § 10.]

Additional notes found at www.leg.wa.gov

15.54.480 Disposition of moneys. (1) Except as provided in subsection (2) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter.

(2) Moneys collected under RCW 15.54.474 shall be deposited in the general fund. [1998 c 36 § 13; 1988 c 254 § 3; 1975 1st ex.s. c 257 § 11; 1967 ex.s. c 22 § 36.]

Additional notes found at www.leg.wa.gov

15.54.490 Cooperation with other entities. The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1967 ex.s. c 22 § 37.]

15.54.500 Turf fertilizer—Prohibitions on application, sales, and retail display. (Effective January 1, 2013.)

(1) A person may not:

(a) Except as otherwise provided in this section, apply turf fertilizer that is labeled as containing phosphorus to turf;

(b) Apply turf fertilizer labeled as containing phosphorus to turf when the ground is frozen;

(c) Intentionally apply turf fertilizer labeled as containing phosphorus to an impervious surface;

(d) Except as otherwise provided in this section, sell turf fertilizer that is labeled as containing phosphorus; or

(e) Display turf fertilizer that is labeled as containing phosphorus in a retail store unless the turf fertilizer is also clearly labeled for a use permitted by this section.

(2) The prohibitions in this section on the application, sale, and retail display of turf fertilizer that is labeled as containing phosphorus, other than the prohibitions in subsection

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(1)(b) and (c) of this section, do not apply in the following instances:

(a) Application for the purpose of establishing grass or repairing damaged grass, using either seeds or sod, during the growing season in which the grass is established;

(b) Application to an area if the soil in the area is deficient in plant available phosphorus, as shown by a soil test performed no more than thirty-six months before the application; or

(c) Application to pasture, interior house plants, flower and vegetable gardens located on either public or private property, land used to grow grass for sod, or any land used for agricultural or silvicultural production.

(3) If a retailer can show proof that a product prohibited for sale under subsection (1)(d) and (e) of this section was in stock and physically in the retail location before January 1, 2012, that retail location may sell that product until it is sold out.

(4)(a) Nothing in this section:

(i) Requires the enforcement or monitoring of compliance with this section by local governments; or

(ii) Requires local governments to participate in the administration of this section, including the verification of soil tests under subsection (2)(b) of this section.

(b) A city or county may not adopt a local ordinance regarding the application or sale of turf fertilizer that is labeled as containing phosphorus that is less restrictive than this section. [2011 c 73 § 2.]

Effective date—2011 c 73: See note following RCW 15.54.270.

15.54.800 Enforcement of chapter—Adoption of rules. (1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapter 34.05 RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Definitions of terms;

(b) Determining standards for labeling and registration of commercial fertilizers;

(c) The collection and examination of commercial fertilizers;

(d) Recordkeeping by registrants and licensees;

(e) Regulation of the use and disposal of commercial fertilizers for the protection of groundwater and surface water; and

(f) The safe handling, transportation, storage, display, and distribution of commercial fertilizers.

(3)(a) Standards are established for allowable levels of nonnutritive substances in commercial fertilizers. These standards are Canadian figures for agricultural and agri-food Canadian maximum acceptable cumulative metal additions to soil established under Trade Memorandum T-4-93 dated August 1996. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.

(b) If federal or other risk-based standards are adopted or scientific peer-reviewed studies show that the standards adopted in this section are not at the appropriate level to protect human health or the environment, the department, in con-

sultation with the departments of ecology and health, may initiate a rule making [may adopt a rule] to amend these standards. [1998 c 36 § 15; 1997 c 427 § 3; 1993 c 183 § 14; 1987 c 45 § 9.]

Additional notes found at www.leg.wa.gov

15.54.820 Department of ecology—Waste-derived or micronutrient fertilizer—Standards—Written decision—Appeal of decision. (1) After receipt from the department of the completed application required by RCW 15.54.325, the department of ecology shall evaluate whether the use of the proposed waste-derived fertilizer or the micronutrient fertilizer as defined in RCW 15.54.270 is consistent with the following:

(a) Chapter 70.95 RCW, the solid waste management act;

(b) Chapter 70.105 RCW, the hazardous waste management act; and

(c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and recovery act.

(2) The department of ecology shall apply the standards adopted in RCW 15.54.800. If more stringent standards apply under chapter 173-303 WAC for the same constituents, the department of ecology must use the more stringent standards.

(3) Within sixty days of receiving the completed application, the department of ecology shall advise the department as to whether the application complies with the requirements of subsections (1) and (2) of this section. In making a determination, the department of ecology shall consult with the department of health and the department of labor and industries.

(4) A party aggrieved by a decision of the department of ecology to issue a written approval under this section or to deny the issuance of such an approval may appeal the decision to the pollution control hearings board within thirty days of the decision. Review of such a decision shall be conducted in accordance with chapter 43.21B RCW. Any subsequent appeal of a decision of the hearings board shall be obtained in accordance with RCW 43.21B.180. [1998 c 36 § 16.]

Additional notes found at www.leg.wa.gov

15.54.910 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1967 ex.s. c 22 § 38.]

15.54.930 Effective date—1967 ex.s. c 22. The effective date of this act is July 1, 1967. [1967 ex.s. c 22 § 40.]

15.54.940 Continuation of rules adopted pursuant to repealed sections. The repeal of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1967 ex.s. c 22 § 41.]

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Repeal of prior law by 1967 act: "Sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 are each repealed." [1967 ex.s. c 22 § 43.]

15.54.950 Short title. RCW 15.54.270 through 15.54.490 and 15.54.910 through 15.54.940 shall be known as the "Washington Commercial Fertilizer Act." [1967 ex.s. c 22 § 42.]

15.54.960 Severability—1967 ex.s. c 22. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1967 ex.s. c 22 § 44.]

Chapter 15.58 RCW

WASHINGTON PESTICIDE CONTROL ACT

Sections

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15.58.942	Severability—1989 c 380.
15.58.943	Effective date—2003 c 212.

15.58.010 Short title. This chapter may be known and cited as the Washington Pesticide Control Act. [1971 ex.s. c 190 § 1.]

15.58.020 Declaration of public interest. The formulation, distribution, storage, transportation, and disposal of any pesticide and the dissemination of accurate scientific information as to the proper use, or nonuse, of any pesticide, is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1971 ex.s. c 190 § 2.]

15.58.030 Definitions. As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(5) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(6) "Department" means the Washington state department of agriculture.

(7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(8) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(9) "Director" means the director of the department or a duly authorized representative.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(11) "EPA" means the United States environmental protection agency.

(12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(14) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. The ingredient statement for a spray adjuvant must be consistent with the labeling requirements adopted by rule.

(19) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(20) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(21) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(22) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(23) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(24) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(25) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other

animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(32) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(33) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(35) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(36) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(37) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, acidifiers, compatibility agents, crop oil concentrates, defoaming agents, drift control agents, modified vegetable oil concentrates, nonionic surfactants, organosilicone surfactants, stickers, and water conditioning agents. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

(41) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(42) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental

costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(43) "Weed" means any plant which grows where not wanted.

(44) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(45) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms. [2011 c 103 § 35; 2004 c 100 § 6; 2003 c 212 § 1; 2000 c 96 § 1; 1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2004 c 100: See note following RCW 17.21.020.

15.58.040 Director's authority—Rules. (1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting

or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices;

(k) The establishment of criteria governing the conduct of a structural pest inspection;

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding:

(i) The application of pesticides to the designated crops; and

(ii) the disposition of any portion of the treated crop;

(m) Fixing and collecting examination fees; and

(n) Requiring individuals to earn recertification credits in the classifications in which they are licensed.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency. [2003 c 212 § 2; 2000 c 96 § 8; 1997 c 242 § 1; 1996 c 188 § 4; 1991 c 264 § 2; 1989 c 380 § 2; 1971 ex.s. c 190 § 4.]

15.58.045 Disposal of unusable pesticides—Rules.

The director of agriculture may adopt rules to allow the department of agriculture to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons licensed under chapter 15.58 RCW or regulated under chapter 17.21 RCW. For purposes of this section, the department may become licensed as a hazardous waste generator. The department may set fees to cover expenses in connection with pesticide waste received from persons licensed under chapter 15.58 RCW. [1989 c 354 § 57.]

Additional notes found at www.leg.wa.gov

15.58.050 Registration of pesticides—Generally.

Every pesticide which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the director subject to the provisions of this chapter. However, registration is not required if: A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this chapter; or a written permit has been obtained from the director to distribute or use the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit. [2002 c 274 § 1; 1989 c 380 § 3; 1971 ex.s. c 190 § 5.]

Effective date—Expiration date—2002 c 274: "(1) Sections 1, 2, and 4 of this act take effect January 1, 2003.

(2) Section 2 of this act expires January 1, 2004." [2002 c 274 § 5.]

15.58.060 Statement for registration—Contents. (1)

The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) The complete formula of the pesticide, including the active and inert ingredients: PROVIDED, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.56.070;

(d) Other necessary information required for completion of the department's application for registration form; and

(e) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(3) The director may prescribe other necessary information by rule. [2005 c 274 § 215; 1989 c 380 § 4; 1971 ex.s. c 190 § 6.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

15.58.065 Protection of privileged or confidential information. (1) In submitting data required by this chapter, the applicant may:

(a) Mark clearly any portions which in the applicant's opinion are trade secrets or commercial or financial information; and

(b) Submit such marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make public information which in the director's judgment should be privileged or confidential because it contains or relates to trade secrets or commercial or financial information except that, when necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director when necessary under this chapter.

(3) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, the director shall notify the applicant or registrant in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in the superior court of Thurston county for a declaratory judgment as to whether such information is subject to protection under subsection (2) of this section. [1989 c 380 § 5; 1979 c 146 § 4.]

15.58.070 Pesticide annual registration fee—Expiration of registrations—Deposit in agricultural local fund.

[Title 15 RCW—page 104]

(1) All registrations issued by the department expire December 31st of the following year except that registrations issued by the department to a registrant who is applying to register an additional pesticide during the second year of the registrant's registration period shall expire December 31st of that year.

(2) An application for registration must be accompanied by a fee of three hundred ninety dollars for each pesticide, except that a registrant who is applying to register an additional pesticide during the year the registrant's registration expires shall pay a fee of one hundred ninety-five dollars for each additional pesticide.

(3) Fees must be deposited in the agricultural local fund to support the activities of the pesticide program within the department.

(4) Any registration approved by the director and in effect on the last day of the registration period, for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110. [2008 c 285 § 15; 2002 c 274 § 3; (2002 c 274 § 2 expired January 1, 2004); 1997 c 242 § 2; 1995 c 374 § 66; 1994 c 46 § 1; 1989 c 380 § 6; 1983 c 95 § 2; 1971 ex.s. c 190 § 7.]

Effective date—2008 c 285 §§ 15-26: "Sections 15 through 26 of this act take effect January 1, 2009." [2008 c 285 § 27.]

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Effective date—2002 c 274 § 3: "Section 3 of this act takes effect January 1, 2004." [2002 c 274 § 6.]

Effective date—Expiration date—2002 c 274: See note following RCW 15.58.070.

Additional notes found at www.leg.wa.gov

15.58.080 Additional fee for late registration renewal. If the renewal of a pesticide registration or special needs registration is not filed by the day the registration expires, an additional fee of fifty dollars shall be assessed and added to the original fee. The additional fee shall be paid by the applicant before the registration renewal for that pesticide shall be issued unless the applicant furnishes an affidavit certifying that the applicant did not distribute the unregistered pesticide during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry. [2002 c 274 § 4; 1994 c 46 § 2; 1989 c 380 § 7; 1983 c 95 § 3; 1971 ex.s. c 190 § 8.]

Effective date—Expiration date—2002 c 274: See note following RCW 15.58.050.

Additional notes found at www.leg.wa.gov

15.58.090 Certain agencies may register without fee—Not subject to RCW 15.58.180. All federal, state, and county agencies shall register without fee all pesticides sold by them and they shall not be subject to the license provisions of RCW 15.58.180. [1971 ex.s. c 190 § 9.]

15.58.100 Criterion for registering. (1) The director shall require the information required under RCW 15.58.060 and shall register the label or labeling for such pesticide if he or she determines that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with the requirements of this chapter;

(c) It will perform its intended function without unreasonable adverse effects on the environment;

(d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment;

(e) In the case of any pesticide subject to section 24(c) of FIFRA, it meets (a), (b), (c), and (d) of this subsection and the following criteria:

(i) The proposed classification for general use, for restricted use, or for both is in conformity with section 3(d) of FIFRA;

(ii) A special local need exists.

(2) The director shall not make any lack of essentiality a criterion for denying registration of any pesticide. [2010 c 8 § 6066; 1979 c 146 § 2; 1971 ex.s. c 190 § 10.]

15.58.110 Refusing or canceling registration—Procedure. (1) If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter or rules adopted under this chapter, the registrant shall be notified of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the corrections the director shall refuse to register the pesticide. The applicant may request a hearing as provided for in chapter 34.05 RCW.

(2) The director may, when the director determines that a pesticide or its labeling does not comply with the provisions of this chapter or the rules adopted under this chapter, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.05 RCW. [1989 c 380 § 8; 1971 ex.s. c 190 § 11.]

15.58.120 Suspension of registration when hazard to public health. The director may, when the director determines that there is or may be an imminent hazard to the public health and welfare, suspend on the director's own motion, the registration of a pesticide in conformance with the provisions of chapter 34.05 RCW. [1989 c 380 § 9; 1971 ex.s. c 190 § 12.]

15.58.130 "Misbranded" as applicable to pesticides, devices, or spray adjuvants. The term "misbranded" shall apply:

(1) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) To any pesticide:

(a) If it is an imitation of or is offered for sale under the name of another pesticide;

(b) If its labeling bears any reference to registration under the provision of this chapter unless such reference be required by rules under this chapter;

(c) If any word, statement, or other information, required by this chapter or rules adopted under this chapter to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If the label does not bear:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) Name, brand or trademark under which the pesticide is sold;

(iii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: PROVIDED, That the director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iv) Directions for use and a warning or caution statement which are necessary and which if complied with would be adequate to protect the public and to prevent injury to the public, including living people, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land; and

(v) The weight or measure of the content, subject to the provisions of chapter 19.94 RCW (state weights and measures act) as enacted or hereafter amended.

(e) If that pesticide contains any substance or substances in quantities highly toxic to people, determined as provided by RCW 15.58.040, unless the label bears, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(f) If the pesticide container does not bear a label or if the label does not contain all the information required by this chapter or the rules adopted under this chapter.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents. [1989 c 380 § 10; 1971 ex.s. c 190 § 13.]

15.58.140 "Adulterated" as applicable to pesticides. The term "adulterated" shall apply to any pesticide if its strength or purity deviates from the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted, or if any contaminant is present in an amount which is determined by the director to be a hazard. [1971 ex.s. c 190 § 14.]

15.58.150 Unlawful practices. (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the rules adopted under this chapter;

(d) Any pesticide unless it has been distinctly denatured as to color, taste, odor, or form if so required by rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered: PROVIDED, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: PROVIDED, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after

a pest inspection or to fail to comply with criteria established by rule for structural pest inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation;

(g) For any person to act as, or advertise that they perform the services of, a structural pest inspector without having a license to act as a structural pest inspector;

(h) For a business to conduct one or more complete wood destroying organism inspections without first having obtained a structural pest inspection company license from the department. [2012 c 25 § 6; 2003 c 212 § 3; 2000 c 96 § 6; 1991 c 264 § 3; 1989 c 380 § 11; 1987 c 45 § 25; 1979 c 146 § 3; 1971 ex.s. c 190 § 15.]

Additional notes found at www.leg.wa.gov

15.58.160 Violations of chapter—"Stop sale, use or removal" order. When the director has reasonable cause to believe a pesticide or device is being distributed, stored, or transported in violation of any of the provisions of this chapter, or of any of the prescribed rules under this chapter, the director may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order, the director may attach the order to the pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. [1989 c 380 § 12; 1971 ex.s. c 190 § 16.]

15.58.170 "Stop sale, use or removal" order—Adjudication. (1) After service of a "stop sale, use or removal" order is made upon any person, either that person or the director may file an action in a court of competent jurisdiction in the county in which a violation of this chapter or rules adopted under this chapter is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or rules adopted under this chapter: PROVIDED, That no authority is granted hereunder to affect the sale or use of products on which legally approved pesticides have been legally used.

(2) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and the proceeds, if such pesticide or device is sold, less cost including legal costs, shall be paid to the state treasury: PROVIDED, That the pesticide or device shall not be sold contrary to the provisions of this chapter or rules adopted under this chapter. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(3) When a decree of condemnation is entered against the pesticide, court costs, fees, and storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. [1997 c 242 § 3; 1989 c 380 § 13; 1971 ex.s. c 190 § 17.]

15.58.180 Pesticide dealer license—Generally. (1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license expires on the master license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state must obtain a pesticide dealer license for his or her principal out-of-state location or outlet, but such a licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license must be accompanied by a fee of sixty-seven dollars and must be made through the master license system and must include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation must be given on the application. The application must state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when pesticides are dispensed only through apparatuses used for pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW. [2008 c 285 § 16; 1997 c 242 § 4; 1989 c 380 § 14; 1983 c 95 § 4; 1982 c 182 § 27; 1971 ex.s. c 190 § 18.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Master license system: Chapter 19.02 RCW.

Additional notes found at www.leg.wa.gov

15.58.200 Pesticide dealer manager—License qualifications. The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesti-

(2012 Ed.)

cide laws and rules; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license must be accompanied by a fee of thirty-three dollars. The pesticide dealer manager license expires annually on a date set by rule by the director. [2008 c 285 § 17; 1997 c 242 § 5; 1992 c 170 § 2; 1991 c 109 § 38; 1989 c 380 § 15; 1981 c 297 § 19; 1971 ex.s. c 190 § 20.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.205 Structural pest inspector licenses—Required—Exemptions. (1) No individual may perform services as a structural pest inspector or advertise that they perform services of a structural pest inspector without obtaining a structural pest inspector license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of sixty dollars.

(2) The following are exempt from the application fee requirement of this section when acting within the authorities of their existing licenses issued under this chapter or chapter 17.21 RCW: Licensed pest control consultants; licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators.

(3) The following are exempt from the structural pest inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if the inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of the damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest inspector licensing requirement.

(4) A structural pest inspector license is not valid for conducting a complete wood destroying organism inspection unless the inspector owns or is employed by a business with a structural pest inspection company license. [2008 c 285 § 18; 2003 c 212 § 5.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

15.58.206 Structural pest inspector licenses—Exemption—Home inspectors. A person licensed as a home inspector under chapter 18.280 RCW is exempt from licensing as a structural pest inspector except when reporting on the identification of or damage by wood destroying insects. [2008 c 119 § 23.]

15.58.207 Structural pest inspector licenses—Examination. The director shall require each applicant for a structural pest inspector license to demonstrate to the director the applicant's knowledge of applicable laws and regulations;

structural pest identification and damage; and conditions conducive to the development of wood destroying organisms by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license. [2003 c 212 § 6.]

15.58.210 Pest control consultant licenses—Required—Exemptions. (1) No individual may perform services as a pest control consultant without obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of sixty dollars.

(2) The following are exempt from the licensing requirements of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet. [2008 c 285 § 19; 2003 c 212 § 4; 2000 c 96 § 9; 1997 c 242 § 6; 1992 c 170 § 3. Prior: 1991 c 264 § 4; 1991 c 109 § 39; 1989 c 380 § 16; 1983 c 95 § 5; 1971 ex.s. c 190 § 21.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.220 Public pest control consultant license. For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant. No person may act as a public pest control consultant without first obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of thirty-three dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision. [2008 c 285 § 20; 1997 c 242 § 7; 1991 c 109 § 40; 1989 c 380 § 17; 1986 c 203 § 4; 1981 c 297 § 20; 1971 ex.s. c 190 § 22.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

15.58.230 Consultant's license—Requirements. The director shall require each applicant for a pest control consultant's license or a public pest control consultant's license to demonstrate to the director the applicant's knowledge of

pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license. [1989 c 380 § 18; 1971 ex.s. c 190 § 23.]

15.58.233 Renewal of licenses—Recertification standards. (1) The director may renew any license issued under this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to perform in those areas licensed.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Individuals licensed under this chapter may qualify for continued licensure through accumulation of recertification credits. Individuals licensed under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Individuals licensed under this chapter may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the recertification requirements if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency-approved government agency plan. [2003 c 212 § 7; 2000 c 96 § 7; 1997 c 242 § 10.]

15.58.235 Renewal of licenses—Delinquency. (1) If an application for renewal of a pesticide dealer license is not filed on or before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license is issued.

(2) If application for renewal of any license provided for in this chapter other than the pesticide dealer license is not filed on or before the expiration date of the license, a penalty equivalent to the license fee shall be assessed and added to the original fee, and shall be paid by the applicant before the renewal license is issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(3) Any license for which a renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [1989 c 380 § 19.]

15.58.240 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license the licensee shall

be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: PROVIDED, That no person shall be required to pay an additional license fee if the person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may charge an examination fee established by the director by rule when an examination is necessary, before a license may be issued or when application for a license and examination is made at other than a regularly scheduled examination date. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination or other recertification standards as determined by the director when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee. [1989 c 380 § 20; 1986 c 203 § 5; 1971 ex.s. c 190 § 24.]

Additional notes found at www.leg.wa.gov

15.58.250 Recordkeeping requirements. Any person issued a license or permit under the provisions of this chapter may be required by the director to keep accurate records on a form prescribed by the director which may contain the following information:

- (1) The delivery, movement or holding of any pesticide or device, including the quantity;
- (2) The date of shipment and receipt;
- (3) The name of consignor and consignee; and
- (4) Any other information, necessary for the enforcement of this chapter, as prescribed by the director.

The director shall have access to such records at any reasonable time to copy or make copies of such records for the purpose of carrying out the provisions of this chapter. [1989 c 380 § 22; 1971 ex.s. c 190 § 25.]

15.58.260 Civil penalties and/or denial, suspension, or revocation of license, registration or permit. The director is authorized to impose a civil penalty and/or deny, suspend, or revoke any license, registration or permit provided for in this chapter subject to a hearing and in conformance with the provisions of chapter 34.05 RCW (Administrative Procedure Act) in any case in which the director finds there has been a failure or refusal to comply with the provisions of this chapter or rules adopted under this chapter. [1989 c 380 § 23; 1985 c 158 § 2; 1971 ex.s. c 190 § 26.]

15.58.270 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1971 ex.s. c 190 § 27.]

15.58.280 Sampling and examination of pesticides or devices—Procedure when criminal proceedings contemplated. The sampling and examination of pesticides or

devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this chapter. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this chapter or rules adopted under this chapter, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his or her views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of this chapter or rules adopted under this chapter have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred. [2010 c 8 § 6067; 1989 c 380 § 24; 1971 ex.s. c 190 § 28.]

15.58.290 Minor violations, warning notice in writing. Nothing in this chapter shall be construed as requiring the director to report for prosecution or for the institution of condemnation proceedings minor violations of this chapter when the director believes that the public interest will be best served by a suitable notice of warning in writing. [1989 c 380 § 25; 1971 ex.s. c 190 § 29.]

15.58.300 Persons exempted from certain penalties under RCW 15.58.150. The penalties provided for violations of RCW 15.58.150(1)(a), (b), (c), (d), and (e) shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier, upon request, permits the director to copy all records showing the transaction in and movement of the articles.

(2) Public officials of the state and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides. [1971 ex.s. c 190 § 30.]

15.58.310 Pesticides for foreign export not in violation of chapter. No pesticides shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply. [1971 ex.s. c 190 § 31.]

15.58.320 Certain pharmacists exempted from licensing provisions. The license provisions of this chapter shall not apply to any pharmacist who is licensed pursuant to chapter 18.64 RCW and does not distribute any pesticide required to be registered under the provisions of this chapter. [1971 ex.s. c 190 § 32.]

15.58.330 Violation of chapter—Misdemeanor. Any person violating any provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor. [1989 c 380 § 26; 1971 ex.s. c 190 § 33.]

15.58.335 Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 27; 1985 c 158 § 1.]

15.58.340 Injunction. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 380 § 28; 1971 ex.s. c 190 § 34.]

15.58.345 Damages—Civil action not precluded. Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 29.]

15.58.350 Persons charged with enforcement barred from interest in pesticides, devices. No person charged with the enforcement of any provision of this chapter shall be directly or indirectly interested in the sale, manufacture or distribution of any pesticide or device. [1971 ex.s. c 190 § 35.]

15.58.360 No recovery of damages when probable cause. No state court shall allow the recovery of damages from administrative action taken or for "stop sale, use or removal" if the court finds that there was probable cause for such action. [1971 ex.s. c 190 § 36.]

15.58.400 Cooperation and agreements with other agencies. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1971 ex.s. c 190 § 40.]

15.58.405 Emergency situations—Special local needs—Experimental use permits. For the purpose of exercising the authority granted to the state under the provisions of FIFRA, the director may:

(1) Meet emergency conditions in this state by applying for an exemption from any provision of FIFRA as provided for by section 18 of that act. If such exemption is granted by the administrator of EPA the director may carry out and enforce the requirements and conditions of the exemption;

(2) Comply with the requirements necessary to issue special local needs registration under section 24(c) of FIFRA; and

(3) Comply with the requirements necessary to issue experimental use permits under section 5(f) of FIFRA. [1979 c 146 § 5.]

15.58.411 Use of license fees—Deposit of money collected for civil penalties. All license fees collected under this chapter shall be paid to the director for use exclusively in the enforcement of this chapter. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1997 c 242 § 8; 1995 c 374 § 67.]

Additional notes found at www.leg.wa.gov

15.58.420 Report to legislature. By February 1st of each year the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report shall include, at a minimum, a review of the department's enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed. [1997 c 242 § 9; 1989 c 380 § 30.]

15.58.445 Wood destroying organism inspections—License required. It is unlawful for any business to conduct complete wood destroying organism inspections without having obtained a company license from the director. Application for a structural pest inspection company license must be on a form prescribed by the director. The application must include the following information:

(1) The full name of the individual applying for such license;

(2) The full name of the company that employs structural pest inspectors;

(3) The physical and mailing addresses of the company, and the telephone and facsimile numbers, if available;

(4) A list of the names of the structural pest inspectors who are employed by the company;

(5) The unique business identifier for the company; and

(6) Any other necessary information prescribed by the director.

Any changes to the information on the prescribed structural pest inspection company license form shall be reported by the company to the department within thirty days of the change. [2003 c 212 § 8.]

15.58.450 Wood destroying organism inspection report—Unique inspection control number required. It is unlawful for any person to issue a wood destroying organism inspection report, prepared in conjunction with the transfer, exchange, or refinancing of any structure, without recording a unique inspection control number on the wood destroying organism inspection report. All wood destroying organism inspection reports completed by the same inspector, relating to a single transfer, exchange, or refinance, shall bear the same unique inspection control number. The responsibility to record the unique inspection control number on the report under this section lies solely with the person issuing the wood destroying organism inspection report. [2000 c 96 § 2.]

15.58.460 Structural pest inspector—Evidence of financial responsibility required—Exemptions. (1) The director shall not issue a license to any individual who

intends to act as a structural pest inspector until evidence of financial responsibility, required and described in subsection (2) of this section, is furnished by the applicant or the business employing the applicant. Licensed commercial applicators that have met the requirements of RCW 17.21.160 and their licensed commercial operator employees are exempt from this financial responsibility requirement when performing specific wood destroying organism inspections. Public employees licensed to perform structural pest inspections are exempt from this licensing requirement when acting within their official capacities.

(2) Evidence of financial responsibility, consisting of one of the following, must be provided and maintained as a condition of licensure:

(a) An errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(a);

(b) A surety bond, the amounts and terms of which are consistent with the requirements of RCW 15.58.465(1)(b);

(c) A surety bond and an errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(c);

(d) An assigned account, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(d);

(e) Any other type of evidence of financial responsibility identified by the director by rule that provides coverage equivalent to that provided by any of (a) through (d) of this subsection.

(3) Evidence of financial responsibility must be supplied to the department on a financial responsibility insurance certificate, surety bond form, assigned account form, or other form prescribed by the director with regard to evidence provided under subsection (2)(e) of this section. [2003 c 212 § 9; 2000 c 96 § 3.]

15.58.465 Structural pest inspector—Forms of evidence of financial responsibility—Amount—Terms. (1) The following requirements apply to the forms of evidence of financial responsibility required under RCW 15.58.460.

(a) **Errors and Omissions Insurance.** The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(a) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy. However, the policy may limit the insurer's liability on the policy in effect at the time of the inspection to two years from the date of the inspection.

(b) **Surety Bond.** The amount of the surety bond required by RCW 15.58.460(2)(b) shall not be less than twenty-five thousand dollars. The surety bond shall be maintained at not less than the required sum at all times during the licensed period. Any person having a claim against the structural pest inspector for legal damages as a result of the actions of the structural pest inspector may bring suit upon the bond in the court of the county in which the inspection took place or of the county in which jurisdiction of the structural pest inspector may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. The suit upon the

bond must be commenced within two years of the date of the inspection.

(c) **Surety Bond and Errors and Omissions Insurance.** The amount of the surety bond required by RCW 15.58.460(2)(c) shall not be less than twelve thousand five hundred dollars. Except as to the amount of the bond, the terms of the bond shall be identical to those set forth in (b) of this subsection. The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(c) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy.

(d) **Assigned Account.** The amount of the assigned account required by RCW 15.58.460(2)(d) shall not be less than twenty-five thousand dollars. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the inspector for legal damages resulting from errors and omissions in the conduct of an inspection, according to the provisions of the assigned account agreement. The department has no liability for payment in excess of the amount of the assigned account.

(i) The assigned account agreement filed with the director as evidence of financial responsibility shall be canceled at the expiration of two years after the inspector's license has expired or been revoked, or at the expiration of two years after the inspector has furnished another form of evidence of financial responsibility required by RCW 15.58.460, unless legal action has been instituted against the inspector prior to the expiration of the two-year period and the director has been provided written notice of the same by the claimant. In such a case the director shall not cancel the assigned account agreement until the director either receives a copy of the order dismissing the action by registered or certified mail, or has received a copy of the unsatisfied judgment and has complied with the requirements of (d)(ii) of this subsection.

(ii) Any person having an unsatisfied final judgment against the inspector for legal damages awarded based on errors and omissions in the conduct of an inspection may execute upon the funds in the assigned account by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall direct the financial institution to pay from the assigned account, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment from the assigned account shall be the order of receipt of the final judgment by the department.

(2) Nothing in subsection (1) of this section that limits the time period in which a suit must be commenced on a surety bond or in which a claim must be made on a policy effects the statute of limitations applicable to any claim any person may have against the structural pest inspector or company.

(3) The director may only accept a surety bond or insurance policy as evidence of financial responsibility if the bond or policy is issued by an insurer authorized to do business in this state. The director shall be notified ten days before any reduction of insurance coverage at the request of the appli-

cant or cancellation of the surety bond or insurance by the surety or insurer and by the insured.

(4) The total and aggregate of the surety and insurer for all claims is limited to the face of the surety bond or insurance policy. The director may accept a surety bond or insurance policy in the proper sum that has a deductible clause in an amount not exceeding five thousand dollars for the total amount of surety bond or insurance required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause may not be accepted by the director unless the applicant furnishes the director with a surety bond or insurance policy which satisfies the amount of the deductible as to all claims that may arise. [2003 c 212 § 10; 2000 c 96 § 4.]

15.58.470 Structural pest inspector—Failure to meet financial responsibility requirements. Whenever the form of evidence of financial responsibility for a structural pest inspector license is reduced below the requirements of RCW 15.58.465 or no longer applies to the structural pest inspector, or whenever the licensee or the business that employs the licensee has failed to provide evidence of financial responsibility as required by RCW 15.58.460 by the expiration date of any previous form of evidence of financial responsibility, the director shall immediately suspend the structural pest inspector license until the requirements of RCW 15.58.465 are met again. [2003 c 212 § 11; 2000 c 96 § 5.]

15.58.900 Effective date—1971 ex.s. c 190. The effective date of this act is July 1, 1971: PROVIDED, That the effective date of sections 21, 22 and 23 is March 1, 1973. [1971 ex.s. c 190 § 42.]

15.58.901 Effective date—2000 c 96. This act takes effect July 1, 2000. [2000 c 96 § 10.]

15.58.910 Continuation of rules adopted pursuant to repealed sections. The repeal of RCW 15.57.010 through 15.57.930 and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.57.010 through 15.57.930 in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. All such rules shall be considered to have been adopted under the provisions of this chapter. [1989 c 380 § 31; 1971 ex.s. c 190 § 43.]

15.58.920 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this chapter becomes effective. [1971 ex.s. c 190 § 44.]

15.58.940 Severability—1971 ex.s. c 190. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 190 § 46.]

15.58.941 Severability—1979 c 146. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the applica-

tion of the provision to other persons or circumstances is not affected. [1979 c 146 § 7.]

15.58.942 Severability—1989 c 380. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 380 § 88.]

15.58.943 Effective date—2003 c 212. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 212 § 12.]

Chapter 15.60 RCW APIARIES

Sections

15.60.005	Definitions.
15.60.010	Apiary advisory committee.
15.60.021	Registration of hives.
15.60.031	Late registration fee.
15.60.040	Money collected under chapter—Placement—Disbursement.
15.60.055	Violations—Penalty.
15.60.065	Apiary coordinated areas—Hearing to establish.
15.60.075	Apiary coordinated areas—Order describing.
15.60.085	Apiary coordinated areas—Boundary change procedure.
15.60.095	Apiary coordinated areas within certain counties.
15.60.900	Severability—1977 ex.s. c 362.
15.60.901	Effective date—2000 c 100.

Honey, standards and marketing: Chapter 69.28 RCW.

Honey bee commission: Chapter 15.62 RCW.

15.60.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the state department of agriculture or the director's authorized representative.

(3) "Apiary" means a site where hives of bees or hives are kept or found.

(4) "Apiarist" means any person who owns bees or is a keeper of bees in Washington.

(5) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

(6) "Colony" refers to a natural group of bees having a queen or queens.

(7) "Hive" means a manufactured receptacle or container prepared for the use of bees, that includes movable frames, combs, and substances deposited into the hive by bees.

(8) "Person" means a natural person, individual, firm, partnership, company, society, association, corporation or every officer, agent, or employee of one of these entities.

(9) "Broker" means a person who is engaged in pollinating agricultural crops for a fee using hives that are owned by another person. [2000 c 100 § 1; 1994 c 178 § 1; 1993 c 89 § 1; 1988 c 4 § 1; 1977 ex.s. c 362 § 1; 1961 c 11 § 15.60.005. Prior: 1955 c 271 § 1.]

15.60.010 Apiary advisory committee. The director may establish an apiary advisory committee including members representing the major segments of the apiary industry

including commercial and noncommercial beekeepers, representatives from the Washington State University apiary program or cooperative extension, and receivers of pollination services as deemed appropriate.

The committee shall advise the director on administration of this chapter and issues affecting the apiary industry. The committee may also advise the director on the funding of research projects of benefit to the apiary industry.

The committee shall meet at the call of the director. Members of the committee shall serve without compensation but may be reimbursed for travel expenses incurred in attending meetings of the committee and any other official duty authorized by the director, pursuant to RCW 43.03.050 and 43.03.060. [2000 c 100 § 2; 1994 c 178 § 3; 1993 c 89 § 3; 1975-'76 2nd ex.s. c 34 § 16; 1961 c 11 § 15.60.010. Prior: 1933 ex.s. c 59 § 1; RRS § 3170-1; prior: 1919 c 116 § 1.]

Additional notes found at www.leg.wa.gov

15.60.021 Registration of hives. (1) Each person owning one or more hives with bees, brokers renting hives, and apiarists resident in other states who operate hives in Washington shall register with the director by April 1st each year.

(2) The registration application shall include:

(a) The name, address, and phone number of the apiarist or broker;

(b) The number of colonies of bees to be owned, brokered, or operated in Washington that year;

(c) A registration fee as prescribed in rule by the director, with the advice of the apiary advisory committee; and

(d) Any other information required by the department by rule.

(3) The director shall issue to each apiarist or broker registered with the department an apiarist identification number. [2000 c 100 § 3; 1994 c 178 § 6; 1993 c 89 § 11; 1988 c 4 § 9; 1977 ex.s. c 362 § 5; 1961 c 11 § 15.60.050. Prior: 1933 ex.s. c 59 § 6; RRS § 3170-6. Formerly RCW 15.60.050.]

15.60.031 Late registration fee. A late fee of one and one-half percent per month shall be assessed on registration fees received after April 1st. [2000 c 100 § 4; 1994 c 178 § 5; 1993 c 89 § 10; 1988 c 4 § 8; 1981 c 296 § 9; 1977 ex.s. c 362 § 9. Formerly RCW 15.60.043.]

Additional notes found at www.leg.wa.gov

15.60.040 Money collected under chapter—Placement—Disbursement. All money collected under this chapter shall be placed in an account in the agricultural local fund. Money in the account shall be used to carry out the purposes of this chapter and may be used for apiary-related activities of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee. No appropriation is required for disbursement from the account. [2000 c 100 § 5; 1994 c 178 § 4; 1993 c 89 § 8; 1988 c 4 § 6; 1981 c 296 § 8; 1977 ex.s. c 362 § 4; 1961 c 11 § 15.60.040. Prior: 1959 c 174 § 1; 1955 c 271 § 6; prior: (i) 1949 c 105 § 2; 1933 ex.s. c 59 § 3; Rem. Supp. 1949 § 3170-3. (ii) 1933 ex.s. c 59 § 4; RRS § 3170-4.]

Additional notes found at www.leg.wa.gov

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15.60.055 Violations—Penalty. (1) Except as provided in subsection (2) of this section, a person who violates or fails to comply with any of the provisions of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor.

(3) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter or any rule adopted under this chapter and that violation has not been punished as a misdemeanor or gross misdemeanor, the director may impose and collect a civil penalty not exceeding one thousand dollars for each violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of omission or commission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [2003 c 53 § 107; 1993 c 89 § 17; 1991 c 363 § 15; 1989 c 354 § 64. Formerly RCW 15.60.170.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

15.60.065 Apiary coordinated areas—Hearing to establish. When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in this section and RCW 15.60.075 and 15.60.085. [2011 c 103 § 5; 1993 c 89 § 18; 1989 c 354 § 65. Formerly RCW 15.60.180.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.60.075 Apiary coordinated areas—Order describing. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the apiary coordinated areas within the county as to the maximum allowable number of hives per site, the minimum allowable distance between sites, and the minimum required setback from property lines. The order shall be entered upon the records of the county and published in a newspaper having general circulation in the county at least once each week for four successive weeks. [1989 c 354 § 66. Formerly RCW 15.60.190.]

Additional notes found at www.leg.wa.gov

15.60.085 Apiary coordinated areas—Boundary change procedure. When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in RCW 15.60.065. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hear-

ing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks. [2011 c 103 § 6; 1989 c 354 § 68. Formerly RCW 15.60.210.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.60.095 Apiary coordinated areas within certain counties. The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering in the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.075, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area. [2011 c 103 § 7; 1993 c 89 § 20. Formerly RCW 15.60.220.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.60.900 Severability—1977 ex.s. c 362. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 362 § 11.]

15.60.901 Effective date—2000 c 100. This act takes effect June 30, 2001. [2000 c 100 § 9.]

Chapter 15.61 RCW

LADYBUGS AND OTHER BENEFICIAL INSECTS

Sections

15.61.010	Administrative declaration—Regulation of commercial movement.
15.61.020	Intergovernmental cooperation.
15.61.030	Injunctions.
15.61.040	Nonapplicability to honey bees and insects used for research.
15.61.050	Violations—Penalty.
15.61.900	Severability—1963 c 232.

15.61.010 Administrative declaration—Regulation of commercial movement. The director of agriculture in order to protect the production of native and/or domestic plants or their products in this state, may declare ladybugs or any other insects to be beneficial insects and necessary to maintain a beneficial biological balance over insects which are detrimental to such native and/or domestic plants or their products. Such declaration shall be made only after a hearing as prescribed in the administrative procedure act, chapter 34.05 RCW.

Upon declaring ladybugs or other insects to be beneficial insects the director of agriculture may regulate or prohibit the commercial movement of such beneficial insects from this state. [1963 c 232 § 10.]

15.61.020 Intergovernmental cooperation. The director of agriculture may cooperate and enter into agreements with governmental agencies, other states, and agencies of the

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federal government to carry out the purposes and provisions of this chapter or rules adopted hereunder. [1963 c 232 § 11.]

15.61.030 Injunctions. The director of agriculture may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to said sections in the county where such violation has occurred, notwithstanding the existence of any other remedies at law. [1963 c 232 § 12.]

15.61.040 Nonapplicability to honey bees and insects used for research. The provisions of this chapter shall not apply to honey bees or to those beneficial insects used for research purposes. [1963 c 232 § 13.]

15.61.050 Violations—Penalty. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 108; 1963 c 232 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.61.900 Severability—1963 c 232. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 232 § 15.]

Chapter 15.62 RCW HONEY BEE COMMISSION

Sections

15.62.010	Purpose and findings.
15.62.020	Definitions.
15.62.030	Commission established by referendum.
15.62.040	Powers and duties of commission.
15.62.050	Commission compositions—Eleven positions.
15.62.060	Position qualifications.
15.62.070	Terms of office—Vacancies.
15.62.080	Apiarist members—Election.
15.62.090	Notice, elections, referenda—Lists of apiarists, manufacturers, processors, and first handlers.
15.62.100	Costs of elections and referendums—Reimbursement.
15.62.110	Quorum—Travel expenses.
15.62.120	Certified copies of commission's proceedings, records, and acts—Admissible in court.
15.62.130	Commission officers—Members' fidelity bonds.
15.62.140	Assessments—Minimum—Increase.
15.62.150	Assessments—Collection—Deposit in local fund—Gifts, grants, and endowments—Failure to remit assessment.
15.62.160	Assessment error—Refund.
15.62.170	Recordkeeping.
15.62.180	Reporting.
15.62.200	Audit of records of affected persons.
15.62.210	Nonliability of state—Salaries, expenses, and liabilities.
15.62.220	Violations—Misdemeanor.
15.62.230	Prosecutions—Superior court jurisdiction—Equitable remedies.
15.62.300	Termination, suspension, or continuance of commission.
15.62.310	Termination or suspension of commission.
15.62.900	Liberal construction.
15.62.910	Severability—1989 c 5.

Apiary regulation: Chapter 15.60 RCW.

15.62.010 Purpose and findings. The purpose of this chapter is to advance the public welfare and education and to

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promote the interest, products, services, and stabilization of Washington's honey bee industry.

The legislature finds that:

(1) Increasing the consumption of products of the honey bee industry and promoting the use of its services and stabilizing the honey bee industry within the state and nation is a valid and necessary exercise of the power of the state to protect the public health, to provide for the economic development of the state, and to promote the welfare of the people of the state;

(2) Honey bee industry products produced and services provided in Washington make an important contribution to the agricultural industry of the state of Washington. The business of researching, marketing, and distributing such products and the promotion of its services is in the public interest;

(3) It is necessary to enhance the reputation of Washington honey bee industry products and services in domestic and national markets;

(4) It is necessary to promote and educate the public regarding the value of honey bee industry products and services, and to spread that knowledge throughout the state and nation to increase the awareness and consumption of honey bee products and the use of honey bee services;

(5) State and national markets for Washington honey bee industry products may benefit from promotion of honey bee products through education and advertising;

(6) It is necessary to stabilize the Washington honey bee industry, to enlarge its markets, and increase the consumption of Washington honey bee industry products and services to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage scales for agricultural labor and maintenance of a reasonable standard of living;

(7) Providing information to the public on the manner, cost, and expense of producing, and the care taken to produce and sell, honey bee industry products and services of the highest quality, the methods and care used in their preparation for market, and the methods of sale and distribution is in the public interest;

(8) It is necessary to protect the public by educating it on the various benefits of honey bee industry services, the food value of its products, and their industrial and medicinal uses. [1989 c 5 § 1.]

15.62.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Affected person" means an apiarist, manufacturer, processor, first handler, broker, or volunteer who shall pay to the commission the minimum assessments required in RCW 15.62.140.

(2) "Apiarist" means any person, firm, partnership, association, or corporation who owns, operates, manages, or brokers ten or more honey bee (*Apis mellifera*) colonies or any volunteer participant having less than ten colonies in the state of Washington.

(3) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(4) "Broker" means any person other than an apiarist who, for a fee, places or sets twenty-five or more bee colonies for pollination or buys and sells one thousand dollars or more per year of industry products he or she does not produce or manufacture.

(5) "Commission" means the Washington state honey bee industry commission or its authorized agents.

(6) "Department" means the department of agriculture.

(7) "Director" means the director of the department of agriculture.

(8) "First handler" means any person in Washington who imports industry products or bee supplies and equipment into Washington for processing, packing, or sale in the state of Washington.

(9) "Industry products" means queen bees, packaged bees, and items which are made by bees including, but not limited to, honey, pollen, bees wax, and propolis and items manufactured for use in the honey bee industry as enumerated under "manufacturer" in this section.

(10) "Manufacturer" means any person making bee supplies and equipment such as: Supers (hive boxes), frames, bees wax foundation, smokers, extractors, bee veils, pollen traps, queen rearing equipment, bee cages and packages, queen excluders, and other bee supplies used in the honey bee industry.

(11) "Person" means any individual, firm, partnership, or corporation engaged in the apiculture industry.

(12) "Processor" means any person processing, selling, marketing, or distributing bee industry products.

(13) "Retail sales" means those sales made directly to consumers whether apiarists, brokers, or persons involved in the apiculture industry, or the public. [1989 c 5 § 2.]

15.62.030 Commission established by referendum.

The Washington state honey bee commission shall be established following approval of a referendum by a majority of the affected apiarists and brokers, as set forth in RCW 15.62.140(4) for assessment increases. [1989 c 5 § 3.]

15.62.040 Powers and duties of commission. The commission shall have the following powers and duties:

(1) To elect a chairperson and other officers as it deems advisable;

(2) To promulgate rules and regulations under the administrative procedure act, chapter 34.05 RCW, and RCW 15.04.200 as necessary to effectuate the purpose and policies of this chapter;

(3) To administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to fulfill the purpose thereof;

(4) To employ and discharge advertising agents, attorneys as permitted by the attorney general, agents, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(5) To establish offices, hire employees who shall be exempt from chapter 41.06 RCW, incur expenses which shall not exceed revenues, enter into contracts, and create such liabilities as are reasonable and proper for the administration of this chapter;

(6) To investigate and refer violations of this chapter to local prosecuting attorneys or special prosecutors appointed by the commission and the local prosecuting attorney;

(7) To contract for scientific research designed to improve production, pollination, management, quality, processing, and distribution and to develop and discover uses for products of the honey bee industry;

(8) To make in its name advertising contracts and other agreements necessary to promote the industry and bee products and services in state, national, and foreign markets;

(9) To keep accurate records of all commission dealings, which shall be open to public inspection and audit by authorized state agencies;

(10) To contract for research to develop more efficient methods of promoting the honey bee industry and its products and services;

(11) To develop and conduct educational programs for the benefit of industry and to inform the public regarding Washington's honey bee industry;

(12) To enter into contracts and agreements for purposes consistent with this chapter;

(13) To publish at least an annual report of its activities and financial status subject to audit by the state auditor;

(14) To establish an operating monetary reserve and carry over to subsequent fiscal periods any excess funds in the reserve: PROVIDED, That the reserve funds shall not exceed one fiscal period's budget. The reserve funds shall only be used to defray any expenses authorized under this chapter;

(15) To audit any affected person's records as described in RCW 15.62.200; and

(16) To consider the assessment of honey or manufactured bee supplies produced or sold in Washington. Assessments shall only be levied after a referendum is conducted and approved by a majority vote, as set forth in RCW 15.62.140(4), of persons engaged in the honey bee industry of Washington. [1989 c 5 § 13.]

15.62.050 Commission compositions—Eleven positions. The commission shall consist of the following members:

(1) Apiarist position one shall represent area one, which includes the counties of Whatcom, San Juan[,] Island, Skagit, Snohomish, and King; and

(2) Apiarist position two shall represent area two, which includes the counties of Pierce, Kitsap, Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, [and] Skamania; and

(3) Apiarist positions three and four shall represent area three, which includes the counties of Kittitas, Yakima, Klickitat, and Benton; and

(4) Apiarist position five shall represent area four, which includes the counties of Okanogan, Chelan, and Douglas; and

(5) Apiarist position six shall represent area five, which includes the counties of Grant, Adams, Franklin, Walla Walla, Columbia, Garfield, Asotin, and Whitman; and

(6) Apiarist position seven shall represent area six, which includes the counties of Spokane, Lincoln, Ferry, Stevens, and Pend Oreille; [and]

(7) Position eight, appointed by the director, shall be a manufacturer or broker of industry products representing Washington residents engaged in the apiculture industry; and

(8) Position nine, appointed by the director, shall be a processor or first handler representing residents engaged in Washington's honey bee industry; and

(9) Position ten shall be the director of the Washington state department of agriculture, who shall be a nonvoting ex officio member; and

(10) Position eleven, appointed by the director, may be an affected person representing out-of-state interests who are not Washington residents but are active as affected persons in Washington. [1989 c 5 § 4.]

15.62.060 Position qualifications. (1) Commission positions one through seven shall be filled by persons who meet the following requirements:

(a) Resident of this state;

(b) Resident of the area they represent; and

(c) Actually engaged in owning, operating, or as a broker of bee colonies for the five years immediately preceding their election.

(2) Commission positions eight and nine shall be filled by persons who meet the following requirements:

(a) Resident of this state; and

(b) Actually engaged as a manufacturer, broker of industry products, processor, or first handler for the five years immediately preceding their election.

(3) Commission members shall be immediately disqualified if they no longer meet the qualifications during their terms of office. The vacancy on the commission shall be filled according to *section 38 of this act.

(4) Position eleven shall be filled by a person who qualifies under subsection (1)(c) or (2)(b) of this section and is not a resident of Washington. [1989 c 5 § 5.]

***Reviser's note:** The reference to "section 38 of this act" is incorrect. Apparently a reference to "section 6 of this act," codified as RCW 15.62.070, was intended.

15.62.070 Terms of office—Vacancies. (1) The regular terms of office of each elected member of the commission shall be three years, except that the term of office for the initial members shall be as follows:

(a) Positions for areas one, four, and seven - one year.

(b) Positions for areas two, five, and eight - two years.

(c) Positions for areas three, six, and nine - three years.

(d) If filled, position for area eleven - three years.

(2) No elected member of the board may serve more than two full consecutive three-year terms.

(3) Terms of office shall end on August 31 of the last year of the elected or appointed term.

(4) Any vacancies on the commission shall be filled by a person meeting the qualifications established in *section 37 of this act appointed by the other voting members of the commission. The appointee shall hold office for the remainder of the term, at which time an election for that position shall be conducted. [1989 c 5 § 6.]

***Reviser's note:** The reference to "section 37 of this act" is incorrect. Apparently a reference to "section 5 of this act," codified as RCW 15.62.060, was intended.

15.62.080 Apiarist members—Election. (1) Apiarist members of the commission shall be nominated and elected by the apiarists within the district they are to represent in the year in which a member's term expires. The candidate receiving the largest number of votes cast shall be elected. The election shall be by secret mail ballot and shall be conducted by the director, who shall be reimbursed for actual expenses of conducting the election by the commission.

(2) The director shall provide forms for the nomination of candidates to each affected person. The nomination form shall provide for the name of the person being nominated and the names of five persons supporting the nomination.

(3) The persons nominating the candidate shall affirm that the candidate meets the qualifications and is willing to serve by signing the nomination form.

(4) The nomination forms shall be returned to the director by June 30 of the election year, and the director shall not accept any nomination postmarked later than midnight of that date.

(5) In the event no nomination is submitted for a position, the director shall nominate at least two, but no more than three, qualified persons and place their names on the election ballot as nominees. Any qualified person may be elected by write-in ballot, even though his or her name was not placed in nomination.

(6) Ballots for electing commission members shall be mailed by the director to all apiarists and brokers in areas where elections are to be held no later than July 15. Ballots, to be valid, shall be returned to the director postmarked no later than July 31. Elected persons shall take office effective September 1 of the year elected except initial elections shall take place within one hundred twenty days after July 23, 1989. [1989 c 5 § 7.]

15.62.090 Notice, elections, referenda—Lists of apiarists, manufacturers, processors, and first handlers.

(1)(a) The director shall cause a list to be prepared of all apiarists, as defined in RCW 15.62.020, from the list of apiarists registered with the department under *RCW 15.60.030. A qualified person may, at any time, have his or her name placed on the list by registering with the department.

(b) The director shall cause a list to be prepared of manufacturers, processors, and first handlers. The list shall be prepared from any information the director has at hand or may readily obtain. A qualified person may, at any time, have his or her name placed on the list by notifying the department and providing such information as the department deems necessary to determine whether the person qualifies as a manufacturer, processor, or first handler under RCW 15.62.020.

(c) For all purposes of giving notice and conducting elections or referenda, the lists the director has on hand under this section, corrected up to the day next preceding the date for issuing notices or ballots, are, for purposes of this chapter, deemed to be the lists of all persons entitled to notice or to assent or dissent or to vote.

(2) Any person may file his or her name and address with the commission for the purpose of receiving notices regarding the activities of the commission. Persons who are not Washington residents but are active as affected persons in this state and who wish to be considered for appointment to position eleven on the commission may file their names with

the director. A person desiring such consideration must supply such information as the director deems appropriate. [1989 c 5 § 8.]

*Reviser's note: RCW 15.60.030 was repealed by 2000 c 100 § 8, effective June 30, 2001.

15.62.100 Costs of elections and referendums—Reimbursement. The commission shall reimburse the director for the actual costs incurred in conducting the elections and referendums, and acquiring lists of affected persons. [1989 c 5 § 9.]

15.62.110 Quorum—Travel expenses. (1) A majority of the commission members shall constitute a quorum for the transaction of all business of the commission.

(2) Members of the commission shall be reimbursed for travel expenses, as prescribed by the commission, for each day spent in attendance at, or traveling to and from, commission meetings or when conducting authorized commission business. [1989 c 5 § 10.]

15.62.120 Certified copies of commission's proceedings, records, and acts—Admissible in court. Copies of the proceedings, records, and acts of the commission, when certified by the secretary, shall be admissible in any court and be evidence of the truth of the statements therein contained. [1989 c 5 § 11.]

15.62.130 Commission officers—Members' fidelity bonds. The commission may elect an executive secretary who is not a member and fix his or her compensation and may appoint a treasurer who shall sign all vouchers and receipts for moneys received by the commission. The commission shall purchase for each of its members a fidelity bond executed by a surety company authorized to do business in the state, in favor of the state and the commission, in a sum to be determined by the commission. [1989 c 5 § 12.]

15.62.140 Assessments—Minimum—Increase. (1) The commission shall collect annual assessments as follows:

(a) Twenty-five cents for each colony operated by an apiarist or broker in Washington at any time in a calendar year. Each colony shall be assessed only once per calendar year. There shall be a minimum assessment of ten dollars.

(b) The sale of a business enterprise by an apiarist or broker shall not be assessed.

The provisions of this subsection (1) are effective only if the referendum required by RCW 15.62.030 on the creation of the commission is adopted.

(2) Subject to approval by referendum, the commission shall have the power and duty to increase the amount of the assessments as necessary to fulfill the purposes of this chapter.

(3) In determining the necessity for an assessment increase, the commission shall consider:

- (a) The purpose of the commission;
- (b) The extent and probable cost of required research, promotion, and advertising;
- (c) The extent of public convenience, interest, and necessity; and
- (d) The expected revenue from the increased assessment.

(4) The increase in assessment shall not become effective until approved by a majority of the affected persons voting in a referendum conducted by the commission. The referendum must be approved by:

(a) Either fifty-one percent of the apiarists and brokers representing sixty-six percent of the colonies registered in Washington in the twelve months preceding voting; or

(b) Sixty-six percent of the apiarists and brokers representing fifty-one percent of the colonies registered in Washington in the twelve months preceding voting; and

(c) Either fifty-one percent of manufacturers, processors, and first handlers representing sixty-six percent of industry products sold in Washington by its residents; or

(d) Sixty-six percent of manufacturers, processors, and first handlers representing fifty-one percent of industry products sold in Washington by its residents. [1989 c 5 § 14.]

15.62.150 Assessments—Collection—Deposit in local fund—Gifts, grants, and endowments—Failure to remit assessment. (1) All assessments shall be collected by the commission on a quarterly basis or as otherwise determined by the commission.

(2) The commission shall create a local fund in a local financial institution approved by the director and shall deposit therein, each day, all moneys received by the commission except an amount for petty cash as fixed by commission regulations. Moneys in the fund shall only be expended for the purposes of this chapter. Moneys in the fund are not subject to appropriation.

(3) The commission fund is authorized to receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(4) If an affected person fails to remit any assessment, such assessment plus interest at the rate of one percent per month from the due date shall constitute a personal debt of the person assessed or who otherwise owes the assessment and shall be due and payable within thirty days from the date it becomes first due the commission. In the event of failure of the person to pay due and payable assessments, the commission may bring civil action against the person in a state court of competent jurisdiction for collection thereof, together with any reasonable costs including attorneys' fees. The action shall be tried and judgment rendered as in any other cause of action for debt due and payable. This provision is in addition to the penalty section contained in RCW 15.62.220. [1989 c 5 § 15.]

15.62.160 Assessment error—Refund. A person shall be entitled to a refund of assessed money held by the commission fund when it has been determined by the commission that the affected person was assessed and made payment in error. [1989 c 5 § 16.]

15.62.170 Recordkeeping. (1) Each apiarist and broker shall keep accurate records of the number of colonies owned or operated during each calendar year.

(2) Each manufacturer shall keep accurate records of gross sales of industry products or manufactured goods sold in the state of Washington.

(3) Each processor shall keep accurate records of the pounds of honey sold in the state of Washington.

(4) Each first-handler shall keep accurate records of the industry products sold in the state of Washington.

(5) The records shall contain information required by the commission and shall be preserved for a period of five years.

(6) The records shall be made available for audit upon request of the commission or its agent, as authorized in RCW 15.62.040 and 15.62.200. [1989 c 5 § 17.]

15.62.180 Reporting. Each affected person shall, as required, file with the commission a return under oath on forms to be furnished by the commission, stating the information requested by the commission regarding the ownership, handling, processing, manufacturing, delivering, shipping, sale, and brokering of various honey bee industry products and activities as defined in RCW 15.62.020. The report shall cover the period or periods of time prescribed by the commission. [1989 c 5 § 18.]

15.62.200 Audit of records of affected persons. The commission through its agents may audit the records of any affected person for the purpose of enforcing the provisions of this chapter. The commission must first notify the affected person of their intention to audit and may request supporting documents of the affected person regarding reports submitted on commission forms under RCW 15.62.180. [1989 c 5 § 20.]

15.62.210 Nonliability of state—Salaries, expenses, and liabilities. The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All salaries, expenses, and liabilities incurred by persons employed or contracting under this chapter for the commission shall be limited to, and payable only from, the funds collected hereunder. [1989 c 5 § 21.]

15.62.220 Violations—Misdemeanor. Any person who violates or aids in the violation of any provision of this chapter or any rule or regulation of the commission shall be guilty of a misdemeanor. [1989 c 5 § 22.]

15.62.230 Prosecutions—Superior court jurisdiction—Equitable remedies. (1) Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(2) The commission is hereby vested with the authority to utilize the services of the local prosecuting attorneys or special prosecutors as agreed upon by the commission and the local prosecutor for purposes of carrying out the prosecution of cases brought under this chapter.

(3) The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter, and the rules and regulations of the commission issued hereunder, and to

prevent and enjoin and restrain violations thereof. [1989 c 5 § 23.]

15.62.300 Termination, suspension, or continuance of commission. In the seventh year following the inception of the commission, a referendum shall be conducted by the department of agriculture to determine if the commission is still desired by the beekeeping industry in Washington. The commission shall continue if the director finds that affected apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such continuance, otherwise it shall be terminated or suspended as in RCW 15.62.310. [1989 c 5 § 25.]

15.62.310 Termination or suspension of commission. The commission shall be terminated or suspended if the director finds that apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such termination or suspension. A referendum may be called by a majority of the commission or by twenty percent of the resident affected persons representing twenty percent of the colonies and industry products sold in Washington.

Any moneys in the treasury at the time of an affirmative termination or suspension vote shall first be used to effect all acts associated with the termination or suspension procedures and liquidation of the affairs of the commission.

Any residual funds not necessary to defray the expenses of termination or suspension of the commission shall be turned over to Washington State University to be used in conducting research on the honey bee *Apis mellifera*. [1989 c 5 § 26.]

15.62.900 Liberal construction. This chapter shall be liberally construed to effectuate the policies and purpose set forth herein. [1989 c 5 § 24.]

15.62.910 Severability—1989 c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 5 § 27.]

Chapter 15.64 RCW FARM MARKETING

Sections

15.64.010	Director's duties and powers.
15.64.030	Studies of farm marketing problems—Rules.
15.64.040	Use of funds for studies—Joint studies with other agencies.
15.64.050	Small farm direct marketing assistance program—Created—Duties.
15.64.060	Farm-to-school program.

15.64.010 Director's duties and powers. The director shall investigate and promote the economical and efficient distribution of farm products, and in so doing may cooperate with federal agencies and agencies of this and other states engaged in similar activities. For such purposes he or she may:

(1) Maintain a market news service by bulletins and through newspapers, giving information as to prices, avail-

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able supplies of different farm products, demand in local and foreign markets, freight rates, and any other data of interest to producers and consumers;

(2) Aid producers and consumers in establishing economical and efficient methods of distribution, promoting more direct business relations by organizing cooperative societies of buyers and sellers and by other means reducing the cost and waste in the distribution of farm products;

(3) Investigate the methods of intermediaries handling farm products, and in so doing, he or she may hear complaints and suggestions and may visit places of business of all such intermediaries and may examine under oath, the officers and employees thereof;

(4) If he or she finds further legislation on this subject advisable, he or she shall make recommendations thereon to the governor not later than the fifteenth of November of each even-numbered year;

(5) Investigate the possibilities of direct dealing between the producer and consumer by parcel post and other mail order methods;

(6) Assist in the obtaining and employment of farm labor, and to that end cooperate with federal, state, and municipal agencies engaged in similar work;

(7) Investigate the methods, charges, and delays of transportation of farm products and assist producers in relation thereto. [2010 c 8 § 6068; 1961 c 11 § 15.64.010. Prior: 1917 c 119 § 3; RRS § 2876.]

15.64.030 Studies of farm marketing problems—Rules. The director shall enact rules and regulations governing the pursuit of technical studies of farm marketing problems. Said studies shall be under the supervision of the director of the experimental station of Washington State University. The extension service of Washington State University shall provide for dissemination to the public of knowledge gained by such studies. [1961 c 11 § 15.64.030. Prior: 1947 c 280 § 2; Rem. Supp. 1947 § 2909-2.]

15.64.040 Use of funds for studies—Joint studies with other agencies. Moneys appropriated to the department for agricultural marketing research shall be expended by the department to further studies by the department, the experiment station of Washington State University and the extension service of Washington State University. The studies shall be made jointly or in conjunction with those made by the United States Department of Agriculture as provided for in the Flannigan-Hope Act, Title II "The Agricultural Marketing Act of 1946" Public Law 733. All funds appropriated shall be expended jointly and as matching funds with any federal funds made available for such purposes. [1961 c 11 § 15.64.040. Prior: 1947 c 280 § 1; Rem. Supp. 1947 § 2909-1.]

15.64.050 Small farm direct marketing assistance program—Created—Duties. (1) The small farm direct marketing assistance program is created.

(2) The director shall employ a small farm direct marketing assistant.

(3) The small farm direct marketing assistance program shall assist small farms in their direct marketing efforts. In carrying out this duty the program shall:

(a) Assist small farms in complying with federal, state, and local rules and regulations as they apply to direct marketing of agricultural products;

(b) Assist in developing infrastructure to increase direct marketing opportunities for small farms;

(c) Provide information on direct marketing opportunities for small farms;

(d) Promote localized food production systems;

(e) Increase access to information for farmers wishing to sell farm products directly to consumers;

(f) Identify and help reduce market barriers facing small farms in direct marketing;

(g) Assist in developing and submitting proposals to grant programs to assist small farm direct marketing efforts; and

(h) Perform other functions that will assist small farms in directly marketing their products. [2007 c 522 § 947; 2007 c 122 § 1; 2001 2nd sp.s. c 3 § 2.]

Severability—2007 c 522: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 522 § 1801.]

Effective date—2007 c 522: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 522 § 1802.]

Findings—2001 2nd sp.s. c 3: "The legislature finds that:

(1) Many consumers in this state appreciate and seek out the opportunity to purchase local farm products.

(2) Consumers and small-scale farmers would both benefit from increased opportunities to market farm products locally. Direct marketing provides farmers with the opportunity to realize an increased share of consumers' food dollars and provides consumers with a greater opportunity to support local agriculture and understand farm operations, farm culture, and the role farms play in meeting our food needs.

(3) The state would greatly benefit from a focused effort to increase the economic viability and profitability of small farms through increasing their ability to market their products directly to consumers.

(4) Direct marketing opportunities are often not feasible for farmers to undertake because of market barriers and the difficulty of obtaining information related to marketing.

(5) A direct marketing assistance program for small farmers could provide the needed information, technical assistance, and barrier clearing work that is a key to increasing direct marketing of farm products." [2001 2nd sp.s. c 3 § 1.]

15.64.060 Farm-to-school program. (1) A farm-to-school program is created within the department to facilitate increased procurement of Washington grown food by schools.

(2) The department, in consultation with the department of health, the office of the superintendent of public instruction, the *department of general administration, and Washington State University, shall, in order of priority:

(a) Identify and develop policies and procedures to implement and evaluate the farm-to-school program, including coordinating with school procurement officials, buying cooperatives, and other appropriate organizations to develop uniform procurement procedures and materials, and practical recommendations to facilitate the purchase of Washington grown food by the common schools. These policies, procedures, and recommendations shall be made available to school districts to adopt at their discretion;

(b) Assist food producers, distributors, and food brokers to market Washington grown food to schools by informing

them of food procurement opportunities, bid procedures, school purchasing criteria, and other requirements;

(c) Assist schools in connecting with local producers by informing them of the sources and availability of Washington grown food as well as the nutritional, environmental, and economic benefits of purchasing Washington grown food;

(d) Identify and recommend mechanisms that will increase the predictability of sales for producers and the adequacy of supply for purchasers;

(e) Identify and make available existing curricula, programs and publications that educate students on the nutritional, environmental, and economic benefits of preparing and consuming locally grown food;

(f) Support efforts to advance other farm-to-school connections such as school gardens or farms and farm visits; and

(g) As resources allow, seek additional funds to leverage state expenditures.

(3) The department in cooperation with the office of the superintendent of public instruction shall collect data on the activities conducted pursuant to chapter 215, Laws of 2008 and communicate such data biennially to the appropriate committees of the legislature beginning November 15, 2009. Data collected may include the numbers of schools and farms participating and any increases in the procurement of Washington grown food by the common schools.

(4) As used in this section, RCW **43.19.1905, **43.19.1906, 28A.335.190, and 28A.235.170, "Washington grown" means grown and packed or processed in Washington. [2008 c 215 § 2.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

***(2) RCW 43.19.1905 and 43.19.1906 were repealed by 2012 c 224 § 29, effective January 1, 2013.

Findings—Intent—2008 c 215: "(1) The legislature recognizes that the benefits of local food production include stewardship of working agricultural lands; direct and indirect jobs in agricultural production, food processing, tourism, and support industries; energy conservation and greenhouse gas reductions; and increased food security through access to locally grown foods.

(2) The legislature finds there is a direct correlation between adequate nutrition and a child's development and school performance. Children who are hungry or malnourished are at risk of lower achievement in school.

(3) The legislature further finds that adequate nutrition is also necessary for the physical health of adults, and that some communities have limited access to healthy fruits and vegetables and quality meat and dairy products, a lack of which may lead to high rates of diet-related diseases.

(4) The legislature believes that expanding market opportunities for Washington farmers will preserve and strengthen local food production and increase the already significant contribution that agriculture makes to the state and local economies.

(5) The legislature finds that the state's existing procurement requirements and practices may inhibit the purchase of locally produced food.

(6) The legislature intends that the local farms-healthy kids act strengthen the connections between the state's agricultural industry and the state's food procurement procedures in order to expand local agricultural markets, improve the nutrition of children and other at-risk consumers, and have a positive impact on the environment." [2008 c 215 § 1.]

Short title—2008 c 215: "This act may be known and cited as the local farms-healthy kids act." [2008 c 215 § 12.]

Captions not law—2008 c 215: "Captions used in this act are not any part of the law." [2008 c 215 § 13.]

Conflict with federal requirements—2008 c 215: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned.

Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2008 c 215 § 14.]

Chapter 15.65 RCW

WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS

(Formerly: Washington state agricultural enabling act of 1961—
Commodity boards)

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Agricultural processing and marketing associations: Chapter 24.34 RCW.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.

15.65.010 Short title. This chapter shall be known and may be cited as the Washington state agricultural enabling act. [1961 c 256 § 1.]

15.65.020 Definitions. The following terms are hereby defined:

(1) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(2) "Affected parties" means any producer, affected producer, handler, or commodity board member.

(3) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(4) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Assessment" means the monetary amount established in a marketing order or agreement that is to be paid by each affected producer to a commodity board in accordance with the schedule established in the marketing order or agreement.

(6) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent person engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent person engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case, the director may in his or her discretion: (a)

Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he or she finds to be similarly situated.

(7) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(9) "Department" means the department of agriculture of the state of Washington.

(10) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative. The phrase "director or his or her designee" means the director unless, in the provisions of any marketing agreement or order, he or she has designated an administrator, board, or other designee to act in the matter designated, in which case "director or his or her designee" means for such order or agreement the administrator, board, or other person(s) so designated and not the director.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him or her. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list shall contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list shall contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list shall contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(17) "Marketing order" means an order adopted by the director under this chapter that establishes a commodity board for an agricultural commodity or agricultural commodities with like or common qualities or producers.

(18) "Member of a cooperative association" means any producer who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(19) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(20) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(21) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer who is subject to a marketing order or agreement. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(22) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he or she produces, and a handler with respect to the agricultural commodities which he or she handles, including those produced by himself or herself.

(23) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(24) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(25) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter. "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(26) "Rule-making proceedings" means the rule-making provisions as outlined in chapter 34.05 RCW.

(27) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and

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neuter. The singular number includes the plural and the plural includes the singular.

(28) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(29) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(30) "Vacancy" means that a board member leaves or is removed from a board position prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(31) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order or agreement. [2011 c 103 § 23. Prior: 2009 c 549 § 1007; 2002 c 313 § 1; 1993 c 80 § 2; 1986 c 203 § 15; prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: "This act takes effect July 1, 2002, except for sections 1, 15, 17, 29, 30, 39, 45, 57, 58, 137, and 138 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 2002]." [2002 c 313 § 139.]

Additional notes found at www.leg.wa.gov

15.65.028 Regulating agricultural commodities—Existing comprehensive scheme. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of agricultural products within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its agricultural commodities be properly promoted by (a) enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the commodities they produce and (b) working towards stabilizing the agricultural industry by increasing consumption of agricultural commodities within the state, the nation, and internationally;

(2) That farmers and ranchers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is now in the overriding public interest that support for the agricultural industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that each agricultural commodity be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agricultural commodities;

(b) Increase the sale and use of Washington state's agricultural commodities in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's agricultural commodities;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's agricultural commodities and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of agricultural commodities produced in Washington state;

(4) That the director seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber, and seek to maintain the economic well-being of the agricultural industry in Washington state consistent with its regulatory activities and responsibilities;

(5) That the director is hereby authorized to implement, administer, and enforce this chapter through the adoption of marketing orders that establish commodity boards; and

(6) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. [2002 c 313 § 2.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.033 Regulating agricultural commodities—

Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

Chapter 15.08 RCW Horticultural pests and diseases;

Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;

Chapter 15.14 RCW Planting stock;

Chapter 15.15 RCW Certified seed potatoes;

Chapter 15.17 RCW Standards of grades and packs;

Chapter 15.19 RCW Certification and inspection of ginseng;

Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;

Chapter 15.49 RCW Seeds;

Chapter 15.53 RCW Commercial feed;

Chapter 15.54 RCW Fertilizers, minerals, and limes;

Chapter 15.58 RCW Washington pesticide control act;

Chapter 15.60 RCW Apiaries;

Chapter 15.64 RCW Farm marketing;

Chapter 15.83 RCW Agricultural marketing and fair practices;

Chapter 15.85 RCW Aquaculture marketing;

Chapter 15.86 RCW Organic products;

Chapter 15.92 RCW Center for sustaining agriculture and natural resources;

Chapter 17.24 RCW Insect pests and plant diseases;

Chapter 19.94 RCW Weights and measures;

Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;

Chapter 22.09 RCW Agricultural commodities;

Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

Chapter 69.07 RCW Washington food processing act;

Chapter 69.25 RCW Washington wholesome eggs and egg products act;

Chapter 69.28 RCW Honey;

7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the dry pea and lentil industry is regulated by or must comply with the additional laws and rules adopted under 7 U.S.C., chapter 38, agricultural marketing act. [2011 c 103 § 24; 2002 c 313 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.040 Establishing a commodity board—Marketing order—Purposes. The director may adopt a marketing order that establishes a commodity board under this chapter for any of the following purposes:

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state:

(a) To develop, and engage in research for developing, better and more efficient production, irrigation, processing, transportation, handling, marketing, and utilization of agricultural products;

(b) To establish orderly marketing of agricultural commodities;

(c) To provide for uniform grading and proper preparation of agricultural commodities for market;

(d) To provide methods and means (including, but not limited to, public relations and promotion) for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(e) To eliminate or reduce economic waste in the marketing and/or use of agricultural commodities;

(f) To restore and maintain adequate purchasing power for the agricultural producers of this state;

(g) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of an agricultural commodity produced in Washington state to any elected official or officer or employee of any agency;

(h) To provide marketing information and services for producers of an agricultural commodity;

(i) To provide information and services for meeting resource conservation objectives of producers of an agricultural commodity;

(j) To engage in cooperative efforts in the domestic or foreign marketing of food products of an agricultural commodity;

(k) To provide for commodity-related education and training; and

(l) To accomplish all the declared policies of this chapter.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times. [2002 c 313 § 4; 2001 c 315 § 4; 1961 c 256 § 4.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.043 Board may establish foundation. A commodity board may establish a foundation using commission funds as grant money when the foundation benefits the commodity for which the board was established. Commission funds may be used for the purposes authorized in the marketing order. [2001 c 315 § 7.]

15.65.047 Director's duties and responsibilities—Amendments to marketing orders or agreements without a referendum—Rules. (1) The director may adopt rules necessary to carry out the director's duties and responsibilities under this chapter including:

(a) The issuance, amendment, or termination of marketing orders or agreements;

(b) Procedural, technical, or administrative rules which may address and include, but are not limited to:

(i) The submission of a petition to issue, amend, or terminate a marketing order or agreement under this chapter;

(ii) Nominations conducted under this chapter;

(iii) Elections of board members or referenda conducted under this chapter;

(iv) Actions of the director upon a petition to issue, amend, or terminate a marketing order or agreement;

(c) Rules that provide for a method to fund:

(i) The costs of staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if the position is not directly funded by the legislature; and

(ii) The actual costs related to the specific activity undertaken on behalf of an individual commodity board or commission.

(2) The director may adopt amendments to marketing agreements or orders without conducting a referendum if the amendments are adopted under the following criteria:

(a) The proposed amendments relate only to internal administration of a marketing order or agreement and are not subject to violation by a person;

(b) The proposed amendments adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, or rules of other Washington state agencies, if the material adopted or incorporated regulates the same activities as are authorized under the marketing order or agreement;

(c) The proposed amendments only correct typographical errors, make address or name changes, or clarify language of a rule without changing the marketing order or agreement; and

(d) The content of the proposed amendments is explicitly and specifically dictated by statute.

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A marketing order or agreement shall not be amended without a referendum to provide that a majority of the commodity board members be appointed by the director. [2002 c 313 § 7.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, notice, grounds for amendments. The director shall administer and enforce this chapter and it shall be his or her duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, and/or suspension of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this chapter and not otherwise. Whenever he or she has reason to believe that the issuance or amendment of a marketing agreement or order will tend to effectuate any declared policy or purpose of this chapter with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply or when a petition for amendment is submitted by majority vote of a commodity board, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance or amendment, and the director shall issue marketing agreements and orders containing the provisions specified in this chapter and from time to time amend the same whenever upon compliance with and on the basis of facts adduced in accordance with the procedural requirements of this chapter he or she shall find that such agreement, order, or amendment:

(1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this chapter.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this chapter. [2002 c 313 § 5; 1961 c 256 § 5.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.060 Form, filing of marketing agreement, order, amendment, and other proceedings. The director shall cause any marketing agreement, order proposed for issuance, or amendment to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order. [2002 c 313 § 6; 1961 c 256 § 6.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.070 Notice of hearing on proposal—Publication—Contents. The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than two days in one or more newspapers of general circulation as the director may prescribe. No such public hearing shall be held prior to five

days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail notice to all producers and handlers within the affected area who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department. [2002 c 313 § 8; 1987 c 393 § 5; 1985 c 261 § 2; 1979 c 154 § 4; 1961 c 256 § 7.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Additional notes found at www.leg.wa.gov

15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses. The director shall have the power to issue subpoenas for the production of any books, records, or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he or she may be so required to testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him or her: PROVIDED, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his or her examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of the witness or the production of the papers and that the witness has been summoned in the manner prescribed in this chapter and that the fees and mileage of the witness have been paid or tendered to him or her in accordance with RCW 2.40.020 and that he or she has failed to attend or produce the papers required by the subpoena at the hearing, cause, or proceeding specified in the notice and subpoena, or has refused to answer questions propounded to him or her in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he or she has not responded to the subpoena. A certified copy of the show cause order shall be served upon the wit-

ness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that the witness appear at the time and place fixed in the decree and testify or produce the required papers, and on failing to obey said decree the witness shall be dealt with as for contempt of court. [2002 c 313 § 9; 1961 c 256 § 9.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies. The director shall make and publish findings based upon the facts, testimony, and evidence received at the public hearings together with any other relevant facts available to him or her from official publications of the United States or any state thereof or any institution of recognized standing and he or she is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his or her findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. [2010 c 8 § 6069; 1961 c 256 § 10.]

15.65.110 Filing objections to recommended decision—Final decision—Waiver. After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his or her final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his or her discretion omit compliance with the provisions of this section. [2010 c 8 § 6070; 1961 c 256 § 11.]

15.65.120 Contents and scope of recommended and final decision—Delivery of copies. The recommended decision shall contain the text in full of any recommended agreement, order, or amendment, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, or amendment containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, or amendment covered thereby, and the director shall issue and deliver or mail copies of the final decision to all producers and handlers within the affected area who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its

entirety no further action shall be taken by the director. [2002 c 313 § 10; 1985 c 261 § 3; 1961 c 256 § 12.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective. With respect to marketing agreements, the director shall after publication of his or her final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: PROVIDED, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and PROVIDED, FURTHER, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he or she shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration, and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto. [2010 c 8 § 6071; 1961 c 256 § 13.]

15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing. No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at RCW 15.65.160) that the issuance of such order or amendment is assented to or favored by producers within the affected area who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers: PROVIDED, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum. [1985 c 261 § 4; 1975 1st ex.s. c 7 § 3; 1961 c 256 § 14.]

15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers. Any marketing order or amendment thereto directly

assessing handlers shall be issued either (1) when the director determines that the issuance of such order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area, as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers of such commodity pursuant to the declared policy of this chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order. [1985 c 261 § 5; 1961 c 256 § 15.]

15.65.160 Ascertainment of required assent percentages. After publication of his or her final decision, the director shall ascertain (either by written agreement in accordance with subsection (1) of this section or by referendum in accordance with subsection (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment, or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected com-

modity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: PROVIDED FURTHER, That a marketing order shall not become effective when the provisions of subsection (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of such affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: PROVIDED, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order. [2010 c 8 § 6072; 1985 c 261 § 6; 1975 1st ex.s. c 7 § 4; 1961 c 256 § 16.]

15.65.170 Issuance or amendment of marketing order—Assent—Rules. If the director determines that the requisite assent has been given to issue or amend a marketing order, the issuance or amendment shall be adopted by rule by the director within thirty days of the validation of the vote. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect. [2002 c 313 § 11; 1987 c 393 § 6; 1961 c 256 § 17.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.175 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums. The director shall not be required to hold a public hearing or a referendum more than once in any twelve-month period on petitions to issue, amend, or terminate a commodity marketing order if any of the following circumstances are present:

- (1) The petition proposes to establish a marketing order or agreement for the same commodity;
- (2) The petition proposes the same or a similar amendment to a marketing order or agreement; or
- (3) The petition proposes to terminate the same marketing order or agreement. [2002 c 313 § 12.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.180 Suspension of marketing agreement or order upon advice of commodity board—Certain prerequisites waived. The director may, upon the advice of the commodity board serving under any marketing agreement or order and without compliance with the provisions of RCW 15.65.050 through 15.65.170, suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if the director finds that such suspension will tend to effectuate the declared policy of this chapter. Any

suspension of all or substantially all of a marketing agreement or order by the director shall not become effective until the end of the then current marketing season. [2002 c 313 § 13; 1961 c 256 § 18.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.183 Termination of marketing order or agreement—Petition—Procedure. The director may terminate a marketing order or agreement in accordance with this chapter.

- (1) To terminate a marketing order or agreement:
 - (a) The director must receive a petition by affected producers under this chapter signed by at least ten percent of the affected producers; or
 - (b) A majority of a commodity board may file a petition with the director.
- (2) The petitioners must include in the petition at the time of filing:
 - (a) A statement of why the marketing order or agreement and the commodity board created under it no longer meets [meet] the purposes of this chapter;
 - (b) The name of a person designated to represent the petitioners; and
 - (c) The effective date of a marketing order or agreement termination, which may not be less than one year from the date the petition was filed with the director.
- (3) Within sixty days of receipt of a petition meeting the requirements of this section, the director shall commence rule-making proceedings to repeal the marketing order or agreement and, subsequently, a referendum on the issue.
- (4) The director shall include a copy of a petition to terminate a marketing order or agreement with the notice to affected producers when rule-making proceedings are commenced.
- (5) If the petitioners fail to meet the requirements of this chapter, the director shall deny the petition and a referendum vote will not be conducted. The person designated to represent the petitioners shall be notified if a petition is denied. [2002 c 313 § 14.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.185 Referendum prior to termination of a marketing order or agreement—Procedure—Exceptions. Except as provided in RCW 15.65.190 or subsection (4) of this section, the director, prior to termination of the marketing order or agreement, shall conduct a referendum as provided in this chapter, the rules adopted by the director, and the applicable marketing order or agreement.

(1) If a referendum on the termination of a marketing order or agreement is assented to, the referendum proposal shall be adopted by the director within thirty days of the count of the ballots and shall go into effect under chapter 34.05 RCW. If those affected producers eligible to vote in the referendum do not assent, no further action shall be taken by the director on the proposal.

(2) The list of affected producers used for conducting a referendum on the termination of a marketing order or agreement shall be kept in the rule-making file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify an affected producer does not invalidate a referendum.

(3) The list of affected producers that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided for in RCW 15.65.190.

(4) If the director determines that one hundred percent of the affected producers have filed a written application with the director requesting that a marketing order or agreement be terminated, the director may terminate the marketing order or agreement without conducting a referendum. The termination of the marketing order or agreement shall go into effect under chapter 34.05 RCW, but no sooner than at the end of the marketing season then current. [2002 c 313 § 15.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.190 Termination of agreement or order on assent of producers—Procedure. Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him or her for such termination. No such termination shall become effective until the expiration of the marketing season then current. [2010 c 8 § 6073; 1985 c 261 § 7; 1961 c 256 § 19.]

15.65.193 When marketing order or agreement is terminated—Duties of affected commodity board. If after complying with the procedures outlined in this chapter and a referendum proposal to terminate a marketing order or agreement is assented to, the affected commodity board shall:

(1) Document the details of all measures undertaken to terminate the marketing order and identify and document all closing costs;

(2) Contact the office of the state auditor and arrange for a final audit of the commodity board. Payment for the audit shall be from commodity board funds and identified in the budget for closing costs;

(3) Provide for the reimbursement to affected producers of moneys collected by assessment. Reimbursement shall be made to those considered affected producers over the previous three-year time frame on a pro rata basis and at a percent commensurate with their volume of production over the previous three-year period unless a different time period is specified in the marketing order or agreement. If the commodity board finds that the amounts of moneys are so small as to make impractical the computation and remitting of the pro rata refund, the moneys shall be paid into the state treasury as unclaimed trust moneys; and

(4) Transfer all remaining files to the department for storage and archiving, as appropriate. [2002 c 313 § 16.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.200 Lists of affected parties—Information used to establish lists—Purpose and use. (1) Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or a designee shall establish a list of affected parties along with vol-

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ume of production data covering a minimum three-year period, or in such lesser time as the affected party has produced the commodity in question, from information provided by the petitioners, by obtaining information on affected parties from applicable producer, handler, or processor organizations or associations or other sources identified as maintaining the information.

(2) The director shall use the list of affected parties for the purpose of notice, referendum proceedings, and electing and selecting members of commodity boards in accordance with this chapter.

(3) An affected party may at any time file his or her name and mailing address with the director. A list of affected parties may be brought up-to-date by the director up to the day preceding a mailing of a notice or ballot under this chapter and that list is deemed the list of affected parties entitled to vote.

(4) The list of affected parties used for the issuance of a marketing order or agreement shall be kept in a file maintained by the director. The list shall be certified as a true representation of the mailing list. Inadvertent failure to notify an affected party does not invalidate a proceeding conducted under this chapter.

(5) The list of affected parties that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided in this chapter.

(6) The director shall provide the commodity board the list of affected and interested parties once a marketing order or agreement is adopted and a commodity board is established as provided in this chapter. [2002 c 313 § 17; 1985 c 261 § 8; 1961 c 256 § 20.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.203 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity board records, and department of agriculture records relating to commodity boards and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity board for the purpose of administering this chapter or a marketing order or agreement may be shared between the department and the applicable commodity board. They may also be used, if required, in any suit or administrative hearing involving this chapter or a marketing order or agreement.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order or agreement as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity board of the name of any person violating any marketing order or agreement and a statement of the manner of the violation by that person. [2005 c 274 § 216; 2002 c 313 § 18.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.205 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes.

(1) Upon completion of any vote, referendum, or nomination and elections, the department shall tally the results of the vote and provide the results to affected parties.

(2) If an affected party disputes the results of a vote, that affected party, within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount.

(3) Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed. [2002 c 313 § 19.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel.

The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he or she shall include in each order and he or she may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he or she determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal, and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, including the authority to borrow money and incur indebtedness, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor. [2010 c 8 § 6074; 1977 ex.s. c 26 § 4; 1961 c 256 § 21.]

15.65.220 Commodity boards—Membership—Marketing agreement or order to establish and control—Director votes.

(1) Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to (a) qualification, (b) nomination, (c) election or appointment by the director, (d) term of office, and (e) powers, duties, and all other matters pertaining to such board.

(2) The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the marketing agreement or order, but in any marketing order or agreement the number of handlers on the board shall not exceed the number of producers thereon. The marketing order or agreement may provide that a majority of the board be appointed by the director, but in any event, no less than one-third of the board members shall be elected by the affected producers.

(3) In the event that the marketing order or agreement provides that a majority of the commodity board be appointed by the director, the marketing order or agreement shall incorporate the provisions of RCW 15.65.243 for board member selection.

(4) The director shall appoint to every board one member who represents the director. The director shall be a voting member of each commodity board. [2003 c 396 § 9; 2002 c 313 § 20; 1961 c 256 § 22.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.230 Qualifications of members of commodity boards.

A producer member of each commodity board must be a practical producer of the affected commodity and must be a citizen, resident of this state, and over the age of eighteen years. Each producer board member must be and have been actually engaged in producing such a commodity within the state of Washington for a period of five years and have, during that period, derived a substantial portion of his or her income therefrom and not be engaged in business, directly or indirectly, as a handler or other dealer. A handler member of each board must be a practical handler of the affected commodity and must be a citizen, resident of this state, and over the age of eighteen years. Each handler board member must be and have been, either individually or as an officer or employee of a corporation, firm, partnership, association, or cooperative, actually engaged in handling such a commodity within the state of Washington for a period of five years and have, during that period, derived a substantial portion of his or her income therefrom. The qualification of a member of the board as set forth in this section must continue during the term of office. [2002 c 313 § 21; 2001 c 315 § 5; 1961 c 256 § 23.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.235 Producer-handlers as producers for membership purposes—Exception.

Whenever any commodity board is formed under the provisions of this chapter and it only affects producers and producer-handlers, then such producer-handlers shall be considered to be acting only as producers for purpose of membership on a commodity board: PROVIDED, That this section shall not apply to a commodity board which only affects producers and producer-handlers of essential oils. [2002 c 313 § 22; 1971 c 25 § 1.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.240 Terms of members of commodity boards—Elections or appointment.

The term of office of board members shall be three years, and one-third as nearly as may be shall be elected or appointed every year: PROVIDED, That at the inception of any agreement or order the entire board shall be elected or appointed one-third for a term of one year, one-third for a term of two years and one-third for a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected or appointed each year.

Any marketing agreement or order may provide for election or appointment of board members by districts, in which case district lines and the number of board members to be elected or appointed from each district shall be specified in such agreement or order and upon such basis as the director

finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this chapter. [2002 c 313 § 23; 1961 c 256 § 24.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.243 When director appoints majority of the board—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director appoints a majority of the board positions as set forth under RCW 15.65.220(3).

(2) Candidates for director-appointed board positions on a commodity board shall be nominated under RCW 15.65.250.

(3) The director shall cause an advisory vote to be held for the director-appointed positions. Not less than ten days in advance of the vote, advisory ballots shall be mailed to all producers or handlers entitled to vote, if their names appear upon the list of affected parties or affected producers or handlers, whichever is applicable. Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of the vote. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why the candidate wishes to be appointed to the board. The director may select either person for the position. [2011 c 103 § 18; 2002 c 313 § 24.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.250 Nominations for election to commodity board—When only one nominee. For the purpose of nominating candidates for board memberships, the director shall call separate meetings of the affected producers and handlers within the affected area and in case elections shall be by districts the director shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all on the list of affected parties or affected producers and/or handlers, whichever is applicable. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for

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membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order or agreement and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

Not more than one board member may be part of the same "person" as defined by this chapter. When only one nominee is nominated for any position on the board, the director shall determine whether the nominee meets the qualifications for the position and, if so, the director shall declare the nominee elected or appoint the nominee to the position. [2002 c 313 § 26; 1987 c 393 § 7; 1985 c 261 § 9; 1975 1st ex.s. c 7 § 5; 1961 c 256 § 25.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.260 Election of members of commodity board—Procedure. (1) The elected members of every commodity board shall be elected by secret mail ballot under the supervision of the director. Elected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer within the affected area shall be entitled to one vote. Elected handler members of the board shall be elected by a majority of the votes cast by the affected handlers within the affected area, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler within the affected area shall be entitled to one vote.

If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(2) Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each producer and handler entitled to vote whose name appears upon the list of affected parties or affected producers or handlers, whichever is applicable. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member. [2002 c 313 § 27; 1985 c 261 § 10; 1961 c 256 § 26.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.270 Vacancies, quorum, compensation, travel expenses of commodity board members and employees.

(1) In the event of a vacancy in an elected position on the board, the remaining board members shall select a qualified person to fill the vacant position for the remainder of the current term or as provided in the marketing order or agreement.

(2) In the event of a vacancy on the board in a position appointed by the director, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the board unless the person fails to meet the qualifications of board members under this chapter and the marketing order or agreement.

(3) A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(4) Each member of the board shall be compensated in accordance with RCW 43.03.230. Members and employees of the board may be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter, as defined under the commodity board's marketing order or agreement. Otherwise, if not defined or referenced in the marketing order or agreement, reimbursement for travel expenses shall be at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [2002 c 313 § 28; 2001 2nd sp.s. c 6 § 1; 1984 c 287 § 16; 1975-'76 2nd ex.s. c 34 § 19; 1961 c 256 § 27.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.65.280 Powers and duties of commodity board—Reservation of power to director. The powers and duties of the board shall be:

(1) To elect a chair and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules and orders and amendments thereto for the exercise of his or her powers in connection with such agreement or order;

(4) To advise the director upon all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the board's marketing order or agreement;

(8) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the board's marketing order or agreement. Personal service contracts must comply with *chapter 39.29 RCW;

(9) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the board's marketing order or agreement;

(10) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a board. The retention of a private attorney is subject to review by the office of the attorney general;

(11) To engage in appropriate fund-raising activities for the purpose of supporting activities of the board authorized by the marketing order or agreement;

(12) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(13) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(14) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the marketing order or agreement, and data on the value of each producer's production for a minimum three-year period;

(15) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person; and

(16) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [2011 c 103 § 14; 2011 c 60 § 1; 2010 c 8 § 6075; 2002 c 313 § 29; 2001 c 315 § 6; 1985 c 261 § 11; 1961 c 256 § 28.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2011 c 60 § 1 and by 2011 c 103 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized. Any member of an agricultural commodity board may also be a member or officer of an association which has the same objectives for which the agricultural commodity board was formed. An agricultural commodity board may also contract with such association for services

necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 1.]

15.65.285 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commodity boards. The restrictive provisions of *chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for any commodity board. [1972 ex.s. c 112 § 2.]

*Reviser's note: Chapter 43.78 RCW was entirely repealed or recodified by 2011 1st sp.s. c 43 § 306.

15.65.287 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 10.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.65.289 Commission speaks for state—Director's oversight. Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 11.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc. Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee, or agent incurred in their official

capacity under the agreement or order shall exist either against its administrator, board, officers, employees, and/or agents in his or her or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or her or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member. [2010 c 8 § 6076; 1961 c 256 § 29.]

15.65.295 Lists of all affected producers and handlers—Affected parties responsible for accuracy—Use of lists. (1) Each commodity board shall prepare a list of all affected producers from any information available from the department, producers, producer associations or organizations, or handlers of the affected commodity. This list shall contain the names and addresses of all affected persons who produce the affected commodity and the amount, by unit, of the affected commodity produced during at least the past three years.

(2) Each commodity board shall prepare a list of all persons who handle the affected commodity and the amount of the commodity handled by each person during at least the past three years.

(3) It is the responsibility of all affected parties to ensure that their correct address is filed with the commodity board. It is also the responsibility of affected parties to submit production data and handling data to the commodity board as prescribed by the board's marketing order or agreement.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commodity board. The lists shall be corrected and brought up-to-date in accordance with evidence and information provided to the commodity board.

(5) At the director's request, the commodity board shall provide the director a list of affected producers or handlers that is certified by the commodity board to be complete according to the commodity board's records. The list shall contain all information required by the director to conduct a referendum or board member election or selection under this chapter and the marketing order or agreement.

(6) For all purposes of giving notice, holding referenda, and electing or selecting members of a commodity board, the applicable list corrected up to the day preceding the date the list is certified by the commodity board and mailed to the director is deemed to be the list of all affected producers or affected handlers, as applicable, entitled to notice or to vote. Inadvertent failure to notify an affected producer or handler does not invalidate a proceeding conducted under this chapter. [2002 c 313 § 30.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.300 Agreement or order to contain detailed statement of powers and purposes. The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in RCW 15.65.310 through 15.65.340. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said RCW 15.65.310 through 15.65.340 set after its name below, to wit:

(1) Wheat, RCW 15.65.310, 15.65.320 and 15.65.330. [1961 c 256 § 30.]

15.65.305 Promotional hosting expenditures—Rules. Agricultural commodity boards shall adopt rules governing promotional hosting expenditures by commodity board employees, agents, or board members under RCW 15.04.200. [2002 c 313 § 31.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order. Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor disparage the quality, value, sale or use of any other agricultural commodity. [1961 c 256 § 31.]

15.65.320 Agreement and order provisions for research. Any marketing agreement or order may provide for research in the production, processing, and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his or her designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his or her designee. [2010 c 8 § 6077; 1961 c 256 § 32.]

15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules. Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his or her designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages, and/or label for the affected com-

modity or any products thereof; (2) requiring producers, handlers, and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling, or otherwise commercially disposing of the affected commodity and/or in offering, advertising, and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his or her designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: PROVIDED, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter. [2010 c 8 § 6078; 1961 c 256 § 33.]

15.65.340 Agreement and order provisions prohibiting or regulating certain practices. Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his or her customer or his or her supplier or of otherwise dealing or trading with him or her or of diverting trade from a competitor, to wit:

(1) Paying rebates, commissions, or unearned discounts;

(2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier, or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received

and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices. [2010 c 8 § 6079; 1961 c 256 § 34.]

15.65.350 Agreement and order to define applicable area—"Production area"—"Marketing area." Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1985 c 261 § 12; 1961 c 256 § 35.]

15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc. Any marketing agreement or order may provide for marketing information and services to producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers. [1961 c 256 § 36.]

15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing. No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural commodity or product thereof produced in any production area of the United States. [1961 c 256 § 37.]

15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose. [2011 c 103 § 8; 2002 c 313 § 32; 1988 c 54 § 1.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.380 Additional agreement or order provisions. Any marketing agreement or order may contain any other, further, and different provisions which are incidental to and not inconsistent with this chapter and which the director finds to be needed and reasonably adapted to effectuate the declared policies of this chapter. The provisions shall set

forth the detailed application of this chapter to the affected agricultural commodity. [2002 c 313 § 33; 1961 c 256 § 38.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.390 Annual assessment—Limitation generally. There is hereby levied, and the director or his or her designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him or her, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him or her: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. [2010 c 8 § 6080; 1987 c 393 § 9; 1985 c 261 § 13; 1961 c 256 § 39.]

15.65.400 Rate of assessment. In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his or her determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate. [2010 c 8 § 6081; 1987 c 393 § 10; 1961 c 256 § 40.]

15.65.410 Time, place, method for payment and collection of assessments. The director shall prescribe in each marketing order and agreement the time, place, and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement:

(1) Require stamps to be purchased from him or her or his or her designee and attached to the containers, invoices,

shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his or her designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid by the producer or first handler and the receipt issued. [2010 c 8 § 6082; 1985 c 261 § 14; 1961 c 256 § 41.]

15.65.420 Use of moneys collected—Departmental expenses. Moneys collected by the director or his or her designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his or her designee only for the purpose of paying for expenses and costs arising in connection with the formulation, issuance, administration, and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement. [2010 c 8 § 6083; 1961 c 256 § 42.]

15.65.430 Refunds of moneys received or collected. Any moneys collected or received by the director or his or her designee pursuant to the provisions of any marketing agreement or order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the director determines to be reasonably adapted to effectuate the declared policies of this chapter and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the director or a designee finds that the same will tend to effectuate such policies and purposes. [2002 c 313 § 34; 1961 c 256 § 43.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect. Any due and payable assessment herein levied in such specified amount as may be determined by the director or his or her designee pursuant to the provisions of this chapter and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his or her designee when payment is called for by him or her. In the event any person fails to pay the director or his or her designee the full amount of such assessment or such other sum on or before the date due, the director or his or her designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his or her designee may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [2010 c 8 § 6084; 1985 c 261 § 15; 1961 c 256 § 44.]

15.65.450 Deposit to defray department's expenses—Circumstances requiring reimbursement. Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him or her such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order.

(1) A commodity board shall reimburse the department for expenses incurred by the department when a commodity board petitions the director to amend or terminate a marketing order or agreement and for other services provided by the department under this chapter. The department shall provide to a commodity board an estimate of expenses that may be incurred to amend or terminate a marketing order or agreement prior to any services taking place.

(2) Petitioners who are not a majority of a commodity board, and who file a petition with the director to issue, amend, or terminate a marketing order or agreement, shall deposit funds with the director to pay for expenses incurred by the department, under rules adopted by the director.

(3) A commodity board shall reimburse petitioners the amount paid to the department under the following circumstances:

(a) If the petition is to issue a marketing order or agreement, the commodity board shall reimburse the petitioners the amount expended by the department when funds become available after establishment of the commodity board; or

(b) If the petition is to amend or terminate a marketing order or agreement and the proposal is assented to by the affected parties or affected producers, the commodity board shall reimburse the petitioners within thirty days of the referendum.

(4) If for any reason a proceeding is discontinued, the commodity board or petitioners, whichever is applicable, shall only reimburse the department for expenses incurred by the department up until the time the proceeding is discontinued. [2002 c 313 § 35; 1961 c 256 § 45.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.470 Depositories for revolving fund—Deposits.

The director or his or her designee shall designate financial institutions which are qualified public depositories under chapter 39.58 RCW as depository or depositories of money received for the marketing act revolving fund. All moneys received by the director or his or her designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day in a designated depository. [1987 c 393 § 8; 1961 c 256 § 47.]

15.65.480 Separate accounts for each agreement or order—Disbursements. The director and each of his or her designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his or her designee. [2010 c 8 § 6085; 1961 c 256 § 48.]

15.65.490 Records of financial transactions to be kept by director—Audits. The director and each of his or her designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys, and other financial transactions made and done pursuant to such order or agreement, and the same shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington or of a fiscal year determined by the director. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned. [2010 c 8 § 6086; 1982 c 81 § 1; 1979 c 154 § 5; 1973 c 106 § 10; 1961 c 256 § 49.]

Additional notes found at www.leg.wa.gov

15.65.500 Bonds of administrator, board, employee.

The director or his or her designee shall require that a bond be given by every administrator, administrative board, and/or

employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his or her designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: PROVIDED, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington. [2010 c 8 § 6087; 1961 c 256 § 50.]

15.65.510 Information and inspections required—Hearings—Confidentiality and disclosures. All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information and inspections may also be required by the director, the director's designee, or the commodity board to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or, any person subject to any marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or the director's designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which the director or the director's designee or any officer of the state of Washington is a

party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person; or

(2) The publication by the director or the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person. [2011 c 103 § 19; 1989 c 354 § 29; 1961 c 256 § 51.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.520 Criminal acts and penalties. It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement, or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement, or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his or her designee or his or her duly authorized agents, upon request, information concerning the name and address of the person from whom he or she has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this chapter and the grade, standard, quality, or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: PROVIDED, That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under subsection (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto. [2010 c 8 § 6088; 1961 c 256 § 52.]

15.65.530 Civil liability—Use of moneys recovered. Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his or her designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to

this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this section shall be allocated to and used for the purposes of the agreement or order concerned. [2010 c 8 § 6089; 1961 c 256 § 53.]

15.65.540 Jurisdiction of superior courts—Who may bring action. The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain, and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition, and provision thereof, regardless of the existence of any other remedy at law;

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter and each and every duty imposed upon him or her by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him or her by this chapter or by any marketing agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal. [2010 c 8 § 6090; 1961 c 256 § 54.]

15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director. Upon the request of the director or his or her designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his or her designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his or her designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [2011 c 103 § 20; 2010 c 8 § 6091; 1961 c 256 § 55.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.65.560 Remedies additional. The remedies provided for in this chapter shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall the same be exclusive. [1961 c 256 § 56.]

15.65.570 Proceedings subject to administrative procedure act—Exemptions. (1) All proceedings conducted under this chapter shall be subject to the provisions of chapter 34.05 RCW unless otherwise provided for in this chapter.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory fairness act, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties. [2002 c 313 § 36; 1961 c 256 § 57.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board. In the event the director finds that it tends to effectuate the declared purposes of this chapter within the standards prescribed in this chapter, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel: PROVIDED, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder. [1961 c 256 § 58.]

15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity. The director and his or her designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation. [2010 c 8 § 6092; 1961 c 256 § 59.]

15.65.600 Public interest to be protected—Establishment of prices prohibited. The director shall protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every mar-

keting agreement and order issued pursuant to this chapter and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices. [1961 c 256 § 60.]

15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter. Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple commission (RCW 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), to [the] dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to the grain commission (chapter 15.115 RCW). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [2009 c 33 § 34; 1961 c 256 § 62.]

15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables. Except for the provisions of this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1985 c 261 § 16; 1961 c 256 § 63.]

15.65.640 Chapter not to apply to green pea grower or processor. Nothing in this chapter shall apply to any person engaged in growing of or processing green peas. [1961 c 256 § 64.]

15.65.650 Hop commodity board—Powers. In order to ensure a viable and stable hop industry within the state of Washington and to further the policies set forth in RCW 15.65.040(2) (d) and (f), the legislature specifically recognizes that the hop commodity board has the power to enter into contracts, at its discretion, with individual producers of hops to set aside or remove from production existing planted hop acreage until such time as the need to contract with individual producers of hops is eliminated based on the adoption of a federal marketing order. This section does not limit the director's duty under RCW 15.65.600. [2002 c 313 § 138.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.670 Costs of implementing RCW 15.65.287.

The costs incurred by the department associated with the implementation of RCW 15.65.287 shall be paid for by the affected commodity commissions. [2003 c 396 § 12.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.65.900 Savings—1961 c 256. This chapter shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. [1961 c 256 § 65.]

Reviser's note: The effective date of this act was midnight June 7, 1961, see preface 1961 session laws.

15.65.910 Severability—1961 c 256. If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional. [1961 c 256 § 66.]

Chapter 15.66 RCW**WASHINGTON STATE AGRICULTURAL COMMODITY COMMISSIONS**

(Formerly: Washington agricultural enabling act of 1955—Commodity commissions)

Sections

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15.66.010 Definitions. For the purposes of this chapter:

(1) "Affected commodity" means the agricultural commodity that is specified in the marketing order.

(2) "Affected handler" means any handler of an affected commodity.

(3) "Affected parties" means any producer, affected producer, handler, or commodity commission member.

(4) "Affected producer" means any producer who is subject to a marketing order.

(5) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Assessment" means the monetary amount established in a marketing order that is to be paid by each affected producer to a commission in accordance with the schedule established in the marketing order.

(7) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to

the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(9) "Department" means the department of agriculture of the state of Washington.

(10) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(11) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of an agricultural commodity that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list must contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list must contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list must contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing order" means an order adopted by rule by the director that establishes a commodity commission for an agricultural commodity pursuant to this chapter.

(17) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

(18) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(19) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals or any unit or agency of local, state, or federal government.

(20) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. "To pro-

duce" means to act as a producer. For the purposes of this chapter, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(21) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(22) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(23) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(24) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(25) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(26) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order. [2011 c 103 § 25; 2002 c 313 § 39; 1993 c 80 § 3; 1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

15.66.015 Regulating agricultural commodities—Existing comprehensive scheme. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of agricultural products within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its agricultural commodities be properly promoted by (a) enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound,

efficient, and unhampered marketing, grading, and standardizing of the commodities they produce; and (b) working towards stabilizing the agricultural industry by increasing consumption of agricultural commodities within the state, the nation, and internationally;

(2) That farmers and ranchers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is now in the overriding public interest that support for the agricultural industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that each agricultural commodity be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agricultural commodities;

(b) Increase the sale and use of Washington state's agricultural commodities in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's agricultural commodities;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's agricultural commodities and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of agricultural commodities produced in Washington state;

(4) That the director seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber, and seek to maintain the economic well-being of the agricultural industry in Washington state consistent with its regulatory activities and responsibilities;

(5) That the director is hereby authorized to implement, administer, and enforce this chapter through the adoption of marketing orders that establish commodity commissions; and

(6) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. [2002 c 313 § 38.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.017 Regulating agricultural commodities—

Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

Chapter 15.08 RCW Horticultural pests and diseases;

Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;

Chapter 15.14 RCW Planting stock;

Chapter 15.15 RCW Certified seed potatoes;

Chapter 15.17 RCW Standards of grades and packs;

Chapter 15.19 RCW Certification and inspection of ginseng;

Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;

Chapter 15.49 RCW Seeds;

Chapter 15.53 RCW Commercial feed;

Chapter 15.54 RCW Fertilizers, minerals, and limes;

Chapter 15.58 RCW Washington pesticide control act;

Chapter 15.60 RCW Apiaries;

Chapter 15.64 RCW Farm marketing;

Chapter 15.83 RCW Agricultural marketing and fair practices;

Chapter 15.85 RCW Aquaculture marketing;

Chapter 15.86 RCW Organic products;

Chapter 15.92 RCW Center for sustaining agriculture and natural resources;

Chapter 17.24 RCW Insect pests and plant diseases;

Chapter 19.94 RCW Weights and measures;

Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;

Chapter 22.09 RCW Agricultural commodities;

Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

Chapter 69.07 RCW Washington food processing act;

Chapter 69.25 RCW Washington wholesome eggs and egg products act;

Chapter 69.28 RCW Honey;

7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the potato industry is regulated by or must comply with the following additional laws and the rules or regulations adopted thereunder:

(a) 7 C.F.R., Part 51, United States standards for grades of potatoes;

(b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes grown in Washington;

(c) 7 C.F.R., Part 1207, Potato research and promotion plan.

(3) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the wheat and barley industries are regulated by or must comply with the following additional laws and the rules adopted thereunder:

(a) 7 U.S.C., section 1621, Agricultural marketing act;

(b) Chapter 70.94 RCW, Washington clean air act, agricultural burning.

(4) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the poultry industry is regulated by or must comply with the following additional laws and the rules adopted thereunder:

(a) 21 U.S.C., chapter 10, Poultry and poultry products inspection;

(b) 21 U.S.C., chapter 9, Packers and stockyards;

(c) 7 U.S.C., section 1621, Agricultural marketing act;

(d) Washington fryer commission labeling standards. [2011 c 103 § 26; 2002 c 313 § 41.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.023 Commission may establish foundation. A commodity commission may establish a foundation using commission funds as grant money when the foundation benefits the commodity for which the commission was established. Commission funds may be used for the purposes authorized in the marketing order. [2001 c 315 § 8.]

15.66.030 Marketing orders authorized—Purposes. Marketing orders may be made for any one or more of the following purposes:

(1) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for any agricultural commodity grown in the state of Washington;

(2) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of any agricultural commodity;

(3) To provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to the same;

(4) To investigate and take necessary action to prevent unfair trade practices;

(5) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of an agricultural commodity produced in Washington state to any elected official or officer or employee of any agency;

(6) To provide marketing information and services for producers of an agricultural commodity;

(7) To provide information and services for meeting resource conservation objectives of producers of an agricultural commodity;

(8) To engage in cooperative efforts in the domestic or foreign marketing of food products of an agricultural commodity;

(9) To provide for commodity-related education and training; and

(10) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity. [2003 c 396 § 1; 2002 c 313 § 40; 2001 c 315 § 1; 1961 c 11 § 15.66.030. Prior: 1955 c 191 § 3.]

Effective date—2003 c 396: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 396 § 45.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.040 Prerequisites to marketing orders—Director's duties. Marketing orders and orders modifying or terminating existing marketing orders shall be promulgated by the director only after the director has done the following:

(1) Received a petition as provided for in RCW 15.66.050;

(2) Given notice of hearing as provided for in RCW 15.66.060;

(3) Conducted a hearing as provided for in RCW 15.66.070;

(4) Made findings and decision as provided for in RCW 15.66.080;

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(5) Determined assent of affected producers as provided for in RCW 15.66.090. [1961 c 11 § 15.66.040. Prior: 1955 c 191 § 4.]

15.66.050 Petition for marketing order—Deposit to defray department's expenses—Circumstances requiring reimbursement. (1) Petitions for issuance, amendment or termination of a marketing order shall be signed by not less than five percent or one hundred of the producers alleged to be affected, whichever is less, and shall be filed with the director. A petition for amendment or termination of a marketing order may be submitted to the director by majority vote of a commission.

(2) A commission shall reimburse the department for expenses incurred by the department when a commodity commission petitions the director to amend or terminate a marketing order and for other services provided by the department under this chapter. The department shall provide to a commodity commission an estimate of expenses that may be incurred to amend or terminate a marketing order prior to any services taking place.

(3) Petitioners who are not a majority of a commission, and who file a petition with the director to issue, amend, or terminate a marketing order, shall deposit funds with the director to pay for expenses incurred by the department, under rules adopted by the director.

(4) A commission shall reimburse petitioners the amount paid to the department under the following circumstances:

(a) If the petition is to issue a marketing order, the commission shall reimburse the petitioners the amount expended by the department when funds become available after establishment of the commission; or

(b) If the petition is to amend or terminate a marketing order, the commission shall reimburse the petitioners within thirty days of the referendum if the proposal is assented to by the affected producers.

(5) If for any reason a proceeding is discontinued, the commission or petitioners, whichever is applicable, shall reimburse the department only for expenses incurred by the department up until the time the proceeding is discontinued. [2002 c 313 § 42; 1961 c 11 § 15.66.050. Prior: 1955 c 191 § 5.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.053 Proceedings subject to administrative procedure act—Exemptions. (1) All rule-making proceedings conducted under this chapter shall be in accordance with chapter 34.05 RCW.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory fairness act, and RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties.

(3) The director may adopt amendments to marketing orders without conducting a referendum if the amendments are adopted under the following criteria:

(a) The proposed amendments relate only to internal administration of a marketing order and are not subject to violation by a person;

(b) The proposed amendments adopt or incorporate by reference without material change federal statutes or regula-

tions, Washington state statutes, or rules of other Washington state agencies, if the material adopted or incorporated regulates the same activities as are authorized under the marketing order;

(c) The proposed amendments only correct typographical errors, make address or name changes, or clarify language of a rule without changing the marketing order;

(d) The content of the proposed amendments is explicitly and specifically dictated by statute.

A marketing order shall not be amended without a referendum to provide that a majority of the commodity commission members be appointed by the director. [2002 c 313 § 43.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.055 Director's duties and responsibilities—Rules. The director may adopt rules necessary to carry out the director's duties and responsibilities under this chapter including:

(1) The issuance, amendment, suspension, or termination of marketing orders;

(2) Procedural, technical, or administrative rules which may address and include, but are not limited to:

(a) The submission of a petition to issue, amend, or terminate a marketing order under this chapter;

(b) Nominations conducted under this chapter;

(c) Elections of commission members or referenda conducted under this chapter; and

(d) Actions of the director upon a petition to issue, amend, or terminate a marketing order;

(3) Rules that provide for a method to fund:

(a) The costs of staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if the position is not directly funded by the legislature; and

(b) The actual costs related to the specific activity undertaken on behalf of an individual commodity board or commission. [2002 c 313 § 44.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.060 Lists of affected parties—Notice—Use of lists. (1) Upon receipt of a petition for the issuance of a marketing order, the director shall establish a list of affected parties of the agricultural commodity affected. In establishing a list of affected parties and their individual production, the director shall publish a notice to producers of the commodity to be affected requiring them to file with the director a report showing the producer's name, mailing address, and the yearly average quantity of the affected commodity produced by him or her in the three years preceding the date of the notice or in such lesser time as the producer has produced the commodity in question. Information as to production may also be accepted from other valid sources if readily available. Notice of a proposed marketing order issuance shall be as provided for in RCW 15.66.070.

(2) The director shall use the list of affected parties for the purpose of notice, referendum proceedings, and electing or selecting members of the commission in accordance with this chapter and rules adopted under this chapter.

(3) An affected party may at any time file his or her name and mailing address with the director. A list of affected parties may be brought up-to-date by the director up to the day

preceding a mailing of a notice or ballot under this chapter and that list is deemed the list of affected parties entitled to vote.

(4) The list of affected parties shall be kept in the rule-making file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify an affected party does not invalidate a proceeding conducted under this chapter.

(5) The list of affected parties that is certified as the true representation of the mailing list of a referendum shall be used to determine assent as provided in this chapter.

(6) The director shall provide the commodity commission the list of affected and interested parties once a marketing order is adopted and a commodity commission is established as provided in this chapter. [2002 c 313 § 45; 1975 1st ex.s. c 7 § 7; 1969 c 66 § 1; 1961 c 11 § 15.66.060. Prior: 1955 c 191 § 6.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.070 Petitions for marketing orders—Public hearing—Legal notice. (1) The substance of a petition received under RCW 15.66.050 shall be set out in detail and designated as the proposal. A copy of the proposal shall be mailed to all affected parties or producers based on the list provided for in RCW 15.66.060 or 15.66.143, as applicable, and shall be posted on the department's web site.

(2) Notice of a public hearing to issue, amend, or terminate a marketing order shall be published in the form of a legal notice for a period of two days in a newspaper of general circulation within the affected areas, as the director may prescribe. The notice must also be posted on the department's web site. The director shall mail a copy of the public hearing notice along with a copy of the proposal as provided in subsection (1) of this section to all affected parties or affected producers, as applicable, who may be directly affected by the proposal and whose names and addresses appear on the list compiled under this chapter. The mailing must include the department's web site address along with a description of the process for the issuance, amendment, or termination of a marketing order, as applicable.

(3) At a public hearing the director shall receive testimony offered in support of, or opposition to, the proposed issuance of, amendment to, or termination of a marketing order and concerning the terms, conditions, scope, and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base any findings upon the testimony received at the hearing, together with any other relevant facts available from official publications of institutions of recognized standing. The director shall describe in the findings such official publications upon which any finding is based.

(4) The director shall have the power to subpoena witnesses and to issue subpoenas for the production of any books, records, or documents of any kind.

(5) The superior court of the county in which any hearing or proceeding may be had may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such sub-

poena. The director, in case of the refusal of any witness to attest or testify or produce any papers required by the subpoena, shall report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of attendance of the witness or the production of the papers and that the witness has been summoned in the manner prescribed in this chapter and that he or she has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the subpoena, or has refused to answer questions propounded to him or her in the course of such hearing, cause, or proceeding, and shall ask an order of the court to compel a witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued, it shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order the witness shall be dealt with as for contempt of court. [2004 c 179 § 1; 2002 c 313 § 46; 1961 c 11 § 15.66.070. Prior: 1955 c 191 § 7.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.080 Findings, conclusions, and recommended decision of the director—Notification—Final decision.

(1) The director shall make findings upon material points controverted at the hearing and required by this chapter and upon such other matters and things as he or she may deem fitting and proper. Based upon those findings, the director shall make conclusions and develop and issue a recommended decision. The findings, conclusions, and recommended decision, and the full text of the proposal shall be posted on the department's web site. For amendment and termination petitions, the affected commission may include a link on its web site to the department's web site.

(2) The recommended decision may deny or approve the proposal in its entirety, or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment, or termination of any marketing order unless he or she shall find with respect thereto:

(a) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objective sought in such marketing order;

(b) That the proposed issuance, amendment, or termination is in conformity with the provisions of this chapter and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

(c) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

(3) If the director's recommended decision does not make any changes to the proposal, notification will be made

by mail in the form of a postcard reciting the director's recommended decision. The postcard will also include the department's web site address where any person can access the full text of the director's findings, conclusions, and recommended decision.

(4) If the director's recommended decision makes changes to the proposal or does not support the proposal, notification will be made by mail in the form of a letter describing the changes made or explaining the reason for not supporting the proposal and a referendum. The letter will also include the department's web site address where any person can access the full text of the director's findings, conclusions, and recommended decision.

(5) After the director issues his or her findings, conclusions, and recommended decision all interested parties shall have a period of not less than fifteen days from the date of the mailing of the postcard or letter to file statements with the director in support of or in opposition to the recommended decision. The director shall consider the additional statements and shall issue his or her final decision. The final decision may be the same as the recommended decision or may be revised in light of the additional information received in response to the recommended decision. The director shall notify affected parties of his or her final decision by mail in the form of a postcard. Notification shall include the department's web site address where any person can access the full text of the director's findings, conclusions, and final decision and the full text of the final proposal. If the final decision denies the proposal in its entirety, no further action shall be taken by the director.

(6) Affected parties who do not have access to materials posted on the department's web site may request notification by fax or mail. [2004 c 179 § 2; 1961 c 11 § 15.66.080. Prior: 1955 c 191 § 8.]

15.66.090 After final decision—Assent of affected parties determined by referendum.

After the director issues his or her final decision approving the issuance, amendment, or termination of a marketing order, the director shall determine by a referendum whether the affected parties or producers assent to the proposed action or not. The director shall conduct the referendum among the affected parties or producers based on the list as provided for in RCW 15.66.060 or 15.66.143, as applicable, and the affected parties or producers shall be deemed to have assented to the proposed issuance or termination order if fifty-one percent or more by number reply to the referendum within the time specified by the director, and if, of those replying, sixty-five percent or more by number and fifty-one percent or more by volume assent to the proposed order. The producers shall be deemed to have assented to the proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent to the proposed order. The determination by volume shall be made on the basis of volume as determined in the list of affected producers created under provisions of RCW 15.66.060, subject to rules and regulations of the director for such determination. The director shall consider the approval or disapproval of any cooperative marketing association authorized by its producer members to act for them in any such referendum, as being the approval or disapproval of the producers who are members of or stock-

holders in or under contract with such association of cooperative producers: PROVIDED, That the association shall first determine that a majority of the membership of the association authorize its action concerning the specific marketing order. Results of the referendum shall be mailed to all affected parties in the form of a postcard. If the requisite assent is given, the director shall adopt the order. [2004 c 179 § 3; 2002 c 313 § 47; 1975 1st ex.s. c 7 § 8; 1961 c 11 § 15.66.090. Prior: 1955 c 191 § 9.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.093 Suspension of marketing order upon request of commodity commission. The director may, upon the request of a commodity commission and without compliance with RCW 15.66.070 through 15.66.090, suspend the commission's order or term or provision thereof for a period of not to exceed one year, if the director finds that the suspension will tend to effectuate the declared policy of this chapter. Any suspension of all, or substantially all, of a marketing order by the director is not effective until the end of the then current marketing season. [2002 c 313 § 48.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.097 Issuing, amending, or terminating a marketing order—Limitation on public hearings or referendums. The director is not required to hold a public hearing or a referendum more than once in any twelve-month period on petitions to issue, amend, or terminate a marketing order if any of the following circumstances are present:

- (1) The petition proposes to establish a marketing order for the same commodity;
- (2) The petition proposes the same or a similar amendment to a marketing order; or
- (3) The petition proposes to terminate the same marketing order. [2002 c 313 § 49.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.100 Contents of marketing order. A marketing order shall define the area of the state to be covered by the order which may be all or any portion of the state; shall contain provisions for establishment of a commodity commission and administration and operation and powers and duties of same; shall provide for assessments as provided for in this chapter and shall contain one or more of the provisions as set forth in RCW 15.66.030. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced. A marketing order may provide that one commodity commission may administer marketing orders for two or more affected commodities, if approved by a majority, as provided in this chapter for the creation of a marketing order, of the affected producers of each affected commodity concerned. [1961 c 11 § 15.66.100. Prior: 1955 c 191 § 10.]

15.66.105 Certain records exempt from public disclosure—Exemptions—Actions not prohibited by chapter. (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity commission records, and department of agriculture records relating to commodity

commissions and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity commission for the purpose of administering this chapter or a marketing order may be shared between the department and the applicable commodity commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity commission of the name of any person violating any marketing order and a statement of the manner of the violation by that person. [2005 c 274 § 217; 2002 c 313 § 50.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.110 Commodity commission—Composition—Terms. (1) Every marketing order shall establish a commodity commission composed of not less than five nor more than fifteen members. Commission members shall be citizens and residents of this state if required by the marketing order, and over the age of eighteen. Not more than one commission member may be part of the same "person" as defined by this chapter. The term of office of commission members shall be three years with the terms rotating so that one-third of the terms will commence as nearly as practicable each year. However, the first commission shall be selected, one-third for a term of one year, one-third for a term of two years, and one-third for a term of three years, as nearly as practicable. Except as provided in subsection (2) of this section, no less than sixty percent of the commission members shall be elected by the affected producers and such elected members shall all be affected producers. Except as provided in subsection (4) of this section, the remaining members shall be appointed by the commission and shall be either affected producers, others active in matters relating to the affected commodity, or persons not so related.

(2) A marketing order may provide that a majority of the commission be appointed by the director.

(3) In the event that the marketing order provides that a majority of the commission be appointed by the director, the marketing order shall incorporate the provisions of RCW 15.66.113 for member selection.

(4) The director shall appoint to every commission one member who represents the director. The director is a voting member of each commodity commission. [2003 c 396 § 4; 2002 c 313 § 51; 2001 c 315 § 2; 1961 c 11 § 15.66.110. Prior: 1955 c 191 § 11.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.113 When director appoints majority of the commission—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director

appoints a majority of the positions of the commission as set forth under RCW 15.66.110(3).

(2) Candidates for director-appointed positions on a commission shall be nominated under RCW 15.66.120(1).

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2011 c 103 § 21; 2002 c 313 § 52.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.120 Commodity commission—Nominations—Elections—Vacancies. (1) Not less than ninety days nor more than one hundred and five days prior to the beginning of each term of each elected commission member, notice shall be mailed to all affected producers with a call for nominations in accordance with this section and provisions of the marketing order. The notice shall give the final date for filing nominations, which shall not be less than eighty days nor more than eighty-five days before the beginning of such term. The notice shall also advise that nominating petitions shall be signed by five persons qualified to vote for such candidates or, if the number of nominating signers is provided for in the marketing order, then the number provided in the marketing order.

(2) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member term, the director shall mail ballots to all affected producers. Ballots shall be required to be returned to the director not less than thirty days prior to the commencement of the term. The mail ballot shall be conducted in a manner so that it shall be a secret ballot. With respect to the first commission for a particular commodity, the director may call for nominations for commission members in the notice of the director's decision following the hearing and the ballot may be submitted at the time the director's proposed order is submitted to the affected producers for their assent.

(3) Commission members may be elected or appointed from various districts within the area covered by the marketing order if the order so provides, with the number of members from each district to be in accordance with the provisions of the marketing order.

(4) The members of the commission not elected by the affected producers shall be elected by a majority of the commission at a meeting of the commission within ninety days

prior to expiration of the term, or appointed by the director under this chapter and the marketing order.

(5) When only one nominee is nominated for any position on the commission, the director shall determine whether the nominee meets the qualifications of the position and, if so, the director shall declare the nominee elected or appoint the nominee to the position.

(6) In the event of a vacancy in an elected commission member position on a commodity commission, the remaining members shall select a qualified person to fill the vacant position for the remainder of the current term or as provided in the marketing order.

(7) In the event of a vacancy in an appointed member position on a commodity commission, the appointment of members shall be as specified in the marketing order.

(8) In the event of a vacancy in a director-appointed member position on a commodity commission, the remaining members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the commission unless the person fails to meet the qualifications of commission members under this chapter and the marketing order. [2002 c 313 § 54; 1975 1st ex.s. c 7 § 9; 1961 c 11 § 15.66.120. Prior: 1955 c 191 § 12.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.123 After any vote, referendum, nomination, or election—Affected parties provided results—Disputes. (1) Upon completion of any vote, referendum, or nomination and elections, the department shall tally the results of the vote and provide the results to affected parties.

(2) If an affected party disputes the results of a vote, that affected party, within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount.

(3) Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed. [2002 c 313 § 55.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.130 Commodity commission—Meetings—Quorum—Compensation—Travel expenses for members and employees. Each commodity commission shall hold such regular meetings as the marketing order may prescribe or that the commission by resolution may prescribe, together with such special meetings that may be called in accordance with provisions of its resolutions upon reasonable notice to all members thereof. A majority of the voting members shall constitute a quorum for the transaction of all business of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230. Members and employees of the commission may be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter, as defined under the commodity commission's marketing order. Otherwise, if not defined or referenced in the marketing order, reimbursement for travel expenses shall be in accordance with RCW 43.03.050 and 43.03.060. [2002 c 313 § 56; 2001 2nd sp.s. c 6 § 2; 1984 c 287 § 17; 1975-'76 2nd ex.s. c 34 § 20; 1975 1st ex.s. c 7 § 10; 1972 ex.s. c 112 § 3; 1961 c 11 § 15.66.130. Prior: 1955 c 191 § 13.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.66.140 Commodity commission—Powers and duties. Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chair and such other officers as determined advisable;

(2) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the commission's marketing order. Personal service contracts must comply with *chapter 39.29 RCW;

(13) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the commission's marketing order;

(14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 15; 2011 c 60 § 2; 2003 c 396 § 2; 2002 c 313 § 57; 2001 c 315 § 3; 1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2011 c 60 § 2 and by 2011 c 103 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.141 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 5.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.66.142 Commission speaks for state—Director’s oversight. Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 6.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.66.143 Lists of all affected producers and handlers—Affected parties responsible for accuracy—Use of lists. (1) Each commodity commission shall prepare a list of all affected producers from any information available from the department, producers, producer associations, organizations, or handlers of the affected commodity. This list shall contain the names and addresses of all affected persons who produce the affected commodity and the amount, by unit, of the affected commodity produced during at least the past three years.

(2) Each commodity commission shall prepare a list of all persons who handle the affected commodity and the amount of the commodity handled by each person during at least the past three years.

(3) It is the responsibility of all affected parties to ensure that their correct address is filed with the commodity commission. It is also the responsibility of affected parties to submit production data and handling data to the commission as prescribed by the commission’s marketing order.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commission. The lists shall be corrected and brought up-to-date in accordance with evidence and information provided to the commission.

(5) At the director’s request, the commodity commission shall provide the director a certified list of affected producers or affected handlers from the commodity commission records. The list shall contain all information required by the director to conduct a referendum or commission member elections under this chapter.

(6) For all purposes of giving notice and holding referenda on amendment or termination proposals, and for giving notice and electing or selecting members of a commission, the applicable list corrected up to the day preceding the date the list is certified by the commission and mailed to the director is deemed to be the list of all affected producers or affected handlers, as applicable, entitled to notice or to vote. Inadvertent failure to notify an affected producer or handler does not invalidate a proceeding conducted under this chapter. [2002 c 313 § 58.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

(2012 Ed.)

15.66.145 Members may belong to association with same objectives—Contracts with associations authorized.

Any member of an agricultural commission may also be a member or officer of an association which has the same objectives for which the agricultural commission was formed. An agricultural commission may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 4.]

15.66.150 Annual assessments—Rate—Collection.

There is hereby levied, and there shall be collected by each commission, upon each and every unit of any agricultural commodity specified in any marketing order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold, processed, stored, or delivered for sale, processing, or storage by him or her. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit or percentage rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit or percentage rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored, or delivered for sale, processing, or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his or her bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him or her during the year, such market value shall be determined by the director upon other sales of the affected commodity determined by the director to be representative and comparable.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

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(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehouse operators and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [2011 c 336 § 415; 1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

Additional notes found at www.leg.wa.gov

15.66.153 Promotional hosting expenditures—Rules. Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by commodity commission employees, agents, or commission members under RCW 15.04.200. [2002 c 313 § 59.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.157 When commodity commission is terminated—Duties of affected commodity commission. If after complying with the procedures outlined in this chapter and a referendum proposal to terminate a commodity commission is assented to, the affected commodity commission shall:

(1) Document the details of all measures undertaken to terminate the commodity commission and identify and document all closing costs;

(2) Contact the office of the state auditor and arrange for a final audit of the commission. Payment for the audit shall be from commission funds and identified in the budget for closing costs;

(3) Provide for the reimbursement to affected producers of moneys collected by assessment. Reimbursement shall be made to those considered affected producers over the previous three-year time frame on a pro rata basis and at a percent commensurate with their volume of production over the previous three-year period unless a different time period is specified in the marketing order. If the commodity commission finds that the amounts of moneys are so small as to make impractical the computation and remitting of the pro rata

refund, the moneys shall be paid into the state treasury as unclaimed trust moneys; and

(4) Transfer all remaining files to the department for storage and archiving, as appropriate. [2002 c 313 § 60.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.160 Annual assessments—Disposition of revenue. Moneys collected by any commodity commission pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the commission only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order.

Upon the termination of any marketing order any and all moneys remaining with the commodity commission operating under that marketing order and not required to defray expenses or repay obligations incurred by that commission shall be returned to the affected producers in proportion to the assessments paid by each in the two year period preceding the date of the termination order. [1961 c 11 § 15.66.160. Prior: 1955 c 191 § 16.]

15.66.170 Annual assessments—Payments—Civil action to enforce. Any due and payable assessment herein levied, and every sum due under any marketing order in a specified amount shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1961 c 11 § 15.66.170. Prior: 1955 c 191 § 17.]

15.66.180 Expenditure of funds collected. All moneys which are collected or otherwise received pursuant to each marketing order created under this chapter shall be used solely by and for the commodity commission concerned and shall not be used for any other commission, nor the department except as otherwise provided in this chapter. Such moneys shall be deposited in a separate account or accounts in the name of the individual commission in any bank which is a state depository. All expenses and disbursements incurred and made pursuant to the provisions of any marketing order shall be paid from moneys collected and received pursuant to such order without the necessity of a specific legislative appropriation and all moneys deposited for the account of any order shall be paid from said account by check or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the commission. None of the provisions of RCW 43.01.050 shall be applicable to any such account or any moneys so received, collected or

expended. [2002 c 313 § 61; 1961 c 11 § 15.66.180. Prior: 1955 c 191 § 18.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.185 Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies, and mutual savings banks. (1) Any funds of any agricultural commodity commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded such accounts by the Federal Deposit Insurance Corporation.

(2) This section shall apply to all funds which may be lawfully so invested, which in the judgment of any agricultural commodity commission are not required for immediate expenditure. The authority granted by this section is not exclusive and shall be construed to be cumulative and in addition to other authority provided by law for the investment of such funds, including, but not limited to, authority granted under chapters 39.58, 39.59, and 43.84 RCW. [2003 c 396 § 3; 2002 c 313 § 62; 1967 ex.s. c 54 § 2. Formerly RCW 30.04.370.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.190 Official bonds required. Every administrator, employee or other person occupying a position of trust under any marketing order and every member actually handling or drawing upon funds shall give a bond in such penal amount as may be required by the affected commission or by the order, the premium for which bond or bonds shall be paid by the commission. [1961 c 11 § 15.66.190. Prior: 1955 c 191 § 19.]

15.66.200 Petition for modification or exemption—Hearing—Appeal from ruling. An affected producer subject to a marketing order may file a written petition with the director stating that the order, agreement, or program or any part thereof is not in accordance with the law, and requesting a modification thereof or exemption therefrom. He or she shall thereupon be given a hearing, which hearing shall be conducted in the manner provided by RCW 15.66.070, and thereafter the director shall make his or her ruling which shall be final.

Appeal from any ruling of the director may be taken to the superior court of the county in which the petitioner resides or has his or her principal place of business, by serving upon the director a copy of the notice of appeal and complaint within twenty days from the date of entry of the ruling. Upon such application the court may proceed in accordance with RCW 7.16.010 through 7.16.140. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the director with directions to make such ruling as the court determines to be in accordance with law or to take such further proceedings as in its opinion are required by this chapter. [2010 c 8 § 6093; 1961 c 11 § 15.66.200. Prior: 1955 c 191 § 20.]

15.66.210 Unlawful acts—Penalties—Injunctions—Investigations. It shall be a misdemeanor for:

(1) Any person wilfully to violate any provision of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter.

(2) Any person wilfully to render or furnish a false or fraudulent report, statement of record required by the director or any commission pursuant to the provisions of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter or wilfully to fail or refuse to furnish or render any such report, statement, or record so required.

In the event of violation or threatened violation of any provision of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the director, the affected commission, or any affected producer on joining the affected commission, shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order and injunction pending litigation upon filing a verified complaint and sufficient bond.

All persons subject to any order shall severally from time to time, upon the request of the director, furnish him or her with such information as he or she finds to be necessary to enable him or her to effectuate the policies of this chapter and the purposes of such order or to ascertain and determine the extent to which such order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemptions from laws relating to trusts, monopolies, and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director. For the purpose of ascertaining the correctness of any report made to the director pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director is authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control of any such person from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such person or such records, or of any subsidiary of any such person. To carry out the purposes of this section the director, upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, documents, or other writings of any kind, and RCW 15.66.070 shall apply with respect to any such hearing, together with such other regulations consistent therewith as the director may from time to time prescribe. [2010 c 8 § 6094; 1961 c 11 § 15.66.210. Prior: 1955 c 191 § 21.]

15.66.220 Compliance with chapter a defense in any action. In any civil or criminal action or proceeding for violation of any rule of [or] statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this chapter or a marketing order issued under this chapter, and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding. [1961 c 11 § 15.66.220. Prior: 1955 c 191 § 22.]

15.66.230 Liability of commission, state, etc. Obligations incurred by any commission and any other liabilities or claims against the commission shall be enforced only against the assets of such commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to this chapter or the assets thereof or against any member officer, employee, or agent of the board in his or her individual capacity. The members of any such commission, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of such commission shall be several and not joint and no member shall be liable for the default of any other member. [2010 c 8 § 6095; 1961 c 11 § 15.66.230. Prior: 1955 c 191 § 23.]

15.66.240 Marketing agreements. Marketing agreements shall be created upon written application filed with the director by not less than five commercial producers of an agricultural commodity and upon approval of the director. The director shall hold a public hearing upon such application. Not less than five days prior thereto he or she shall give written notice thereof to all producers whom he or she determines may be proper parties to such agreement and shall publish such notice at least once in a newspaper of general circulation in the affected area. The director shall approve an agreement so applied for only if he or she shall find:

- (1) That no other agreement or order is in force for the same commodity in the same area or any part thereof;
- (2) That such agreement will tend to effectuate its purpose and the declared policies of this chapter and conforms to law;
- (3) That enough persons who produce a sufficient amount of the affected commodity to tend to effectuate said policies and purposes and to provide sufficient moneys to defray the necessary expenses of formulation, issuance, administration, and enforcement have agreed in writing to said agreement.

Such agreement may be for any of the purposes and may contain any of the provisions that a marketing order may contain under the provisions of this chapter but no other purposes and provisions. A commodity commission created by such agreement shall in all respects have all powers and duties as a commodity commission created by a marketing order. Such agreement shall be binding upon, and only upon, persons who have signed the agreement: PROVIDED, That a cooperative association may, in behalf of its members, execute any and all marketing agreements authorized hereunder, and upon so doing, such agreement so executed shall be binding upon said cooperative association and its members. Such agreements shall go into force when the director endorses his or her approval in writing upon the agreement and so notifies all who have signed the agreement. Additional signatories may be added at any time with the approval of the director.

Every agreement shall remain in force and be binding upon all persons so agreeing for the period specified in such agreement but the agreement shall provide a time at least once in every twelve months when any or all such persons may withdraw upon giving notice as provided in the agreement. Such an agreement may be amended or terminated in the same manner as herein provided for its creation and may also be terminated whenever after the withdrawal of any signatory the director finds on the basis of evidence presented at such hearing that not enough persons remain signatory to such agreement to effectuate the purposes of the agreement or the policies of the act or to provide sufficient moneys to defray necessary expenses. However, in the event that a cooperative association is signatory to the marketing agreement in behalf of its members, the action of the cooperative association shall be considered the action of its members for the purpose of determining withdrawal or termination. [2010 c 8 § 6096; 1961 c 11 § 15.66.240. Prior: 1955 c 191 § 24.]

15.66.245 Marketing agreement or order—Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity commission, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose. [2011 c 103 § 9; 2002 c 313 § 63; 1988 c 54 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.250 Price fixing and product limiting prohibited. Nothing contained in this chapter shall permit fixing of prices not otherwise permitted by law or any limitation on production and no marketing order or agreement or any rule or regulation thereunder shall contain any such provisions. [1961 c 11 § 15.66.250. Prior: 1955 c 191 § 25.]

15.66.260 Costs of conducting nominations and elections—Reimbursement. The department shall be reimbursed for actual costs incurred in conducting nominations and elections for members of any commodity commission established under the provisions of this chapter. Such reimbursement shall be made from the funds of the commission for which the nominations and elections were conducted by the director. [2002 c 313 § 64; 1969 c 66 § 2; 1961 c 11 § 15.66.260. Prior: 1955 c 191 § 26.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.263 Costs of implementing RCW 15.66.141. The costs incurred by the department of agriculture that are associated with the implementation of RCW 15.66.141 shall be paid for by the affected commodity commissions. [2003 c 396 § 8.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.66.270 Exempt commissions—Marketing agreements and orders. This chapter does not apply to any provision of the statutes of the state of Washington relating to the Washington apple commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW), to the dairy products commission (chapter 15.44 RCW), or to the Washington grain commission (chapter 15.115 RCW). Marketing agreements or orders shall not be issued with respect to apples, soft tree fruits, dairy products, or wheat or barley for the purposes specified in RCW 15.66.030 (1) or (2). [2009 c 33 § 35; 2007 c 234 § 100; 1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

15.66.275 Applicability of chapter to state agencies or other governmental units. The provisions of this chapter and any marketing order established thereunder shall be applicable to any state agency or other governmental unit engaged in the production for sale of any agricultural commodity subject to such marketing order, especially those relating to RCW 15.66.150 concerning assessments. Such assessments shall be paid by the state agency or governmental agency made subject to the marketing order from the proceeds derived from the sale of said agricultural commodities. [1967 ex.s. c 55 § 1.]

15.66.280 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commissions. The restrictive provisions of *chapter 43.78 RCW as now or hereafter amended shall not apply to promotional printing and literature for any commission formed under this chapter. [1972 ex.s. c 112 § 5.]

***Reviser's note:** Chapter 43.78 RCW was entirely repealed or recodified by 2011 1st sp.s. c 43 § 306.

15.66.900 Short title. This chapter shall be known and may be cited as the "Washington Agricultural Enabling Act." [1961 c 11 § 15.66.900. Prior: 1955 c 191 § 29.]

15.66.901 Severability—2004 c 99. If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose. [2004 c 99 § 3.]

Effective date—2004 c 99: See note following RCW 15.28.901.

Chapter 15.70 RCW RURAL REHABILITATION

Sections

15.70.010	Director may receive federal funds for rural rehabilitation corporation.
15.70.020	Director may delegate certain powers to secretary of agriculture.
15.70.030	Deposit and use of funds.
15.70.040	Powers of director—In general.
15.70.050	No liability as to United States.

(2012 Ed.)

15.70.010 Director may receive federal funds for rural rehabilitation corporation. The director of the state department of agriculture is hereby designated as the state official of the state of Washington to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of public law 499, 81st congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Washington rural rehabilitation corporation. [1961 c 11 § 15.70.010. Prior: 1951 c 169 § 1.]

15.70.020 Director may delegate certain powers to secretary of agriculture. The director of agriculture is authorized, in his or her discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend, and use in the state of Washington all or any part of such trust assets or any other funds of the state of Washington which may be appropriated for such uses for carrying out the purposes of titles I and II of the Bankhead-Jones farm tenant act, in accordance with the applicable provisions of title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [2010 c 8 § 6097; 1961 c 11 § 15.70.020. Prior: 1951 c 169 § 2.]

15.70.030 Deposit and use of funds. Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of RCW 15.70.020 shall be received by the director of agriculture and by him or her deposited with the treasurer of the state. Such funds are hereby appropriated and may be expended or obligated by the director of agriculture for the purposes of RCW 15.70.020 or for use by the director of agriculture for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Washington rural rehabilitation corporation as may from time to time be agreed upon by the director of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said public law 499. [2010 c 8 § 6098; 1961 c 11 § 15.70.030. Prior: 1951 c 169 § 3.]

15.70.040 Powers of director—In general. The director of agriculture is authorized and empowered to:

(1) Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract, or agreement entered into or administered pursuant to this chapter and if, in his or her judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction;

(2) Bid for and purchase at any execution, foreclosure, or other sale, or otherwise to acquire property upon which the director of agriculture has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed, or which otherwise secures any loan or other indebtedness

owing to or acquired by the director of agriculture under this chapter; and

(3) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him or her under agreements entered into pursuant to RCW 15.70.020. [2010 c 8 § 6099; 1961 c 11 § 15.70.040. Prior: 1951 c 169 § 4.]

15.70.050 No liability as to United States. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the director of agriculture of the state of Washington pursuant to this chapter. [1961 c 11 § 15.70.050. Prior: 1951 c 169 § 5.]

Chapter 15.74 RCW HARDWOODS COMMISSION

Sections

15.74.005	Legislative purpose.
15.74.010	Commission created.
15.74.020	Commission authority.
15.74.030	Commission management.
15.74.040	Financial requirements.
15.74.050	Obligations, liabilities, and claims.
15.74.060	Assessments—Generally.
15.74.070	Assessments—Failure to pay.
15.74.900	Severability—1990 c 142.

15.74.005 Legislative purpose. The legislature recognizes that the economic base of the state of Washington is directly tied to the development and management of forest industries and that efforts to enhance and promote the recognition and expansion of the hardwoods industry should be coordinated between state and federal agencies, the forest products industry, commissions, institutions of higher education, and other entities. The legislature further recognizes that the development of hardwood forests and hardwood products will require multispecies, sustained-yield management plans for industrial and nonindustrial timber tracts, the development of products and markets for all grades of hardwoods, a stable and predictable tax program for new and existing firms and financial assistance for the attraction and expansion of new and existing hardwood processing facilities. The legislature also recognizes that the welfare of the citizens of the state of Washington require, as a public purpose, a continuing effort toward the full utilization of hardwood forests and the hardwood products industry. [1990 c 142 § 1.]

15.74.010 Commission created. In recognition of the findings and purposes in RCW 15.74.005, there is created the Washington hardwoods commission, which is created solely for the purposes set forth in this chapter. The commission shall be comprised of seven members. All members shall be members of the hardwood industry. All members shall initially be appointed by the governor and shall be appointed to staggered terms. Three members shall be appointed for a two-year term, two members to a three-year term, and two mem-

bers to a four-year term. The hardwoods commission shall, by January 1, 1991, develop a method of electing board members to replace the appointed members. Each board member shall serve until the election of his or her successor. Five voting members of the commission constitute a quorum for the transaction of any business of the commission. Each member of the commission shall be a resident of the state and over the age of twenty-one. [1990 c 142 § 2.]

15.74.020 Commission authority. The commission shall have the power, duty, and responsibility to assist in the retention, expansion, and attraction of hardwood-related industries by creating a climate for development and support of the industry. The commission shall coordinate efforts to enhance and promote the expansion of the forest industry among state and federal agencies, industry organizations, and institutions of higher education. The commission shall have the power and duty to develop products and markets for various species and grades of hardwoods, and to study and recommend a tax program that will attract new firms and promote stability for existing firms. The commission shall also have as its duty the development of an enhancement and protection program that will reduce waste and respect environmental sensitivity. The commission will develop financial assistance programs from public and private moneys for attraction and expansion of new and existing primary, secondary, and tertiary processing facilities. It is also appropriate that the commission utilize recognized experts in educational institutions, public and private foundations, and agencies of the state, to facilitate research into economic development, hardwood silviculture, woodland management, and the development of new products. The commission will also work cooperatively with the department of natural resources in the development of best management practices for hardwood resources. [1990 c 142 § 3.]

15.74.030 Commission management. The commission shall have the power to elect a chair and such officers as the commission deems necessary and advisable. The commission shall elect a treasurer who shall be responsible for all receipts and disbursements by the commission. The treasurer's faithful discharge of duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its governance, which shall provide for the holding of an annual meeting for the election of officers and the transaction of other business and for such other meetings as the commission may direct. The commission shall do all things reasonably necessary to effect the purposes of this chapter. The commission shall have no legislative power. The commission may employ and discharge managers, secretaries, agents, attorneys, and other employees or staff, and may engage the services of independent contractors, prescribe their duties, and fix their compensation. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1991 c 67 § 1; 1990 c 142 § 4.]

15.74.040 Financial requirements. The commission shall maintain an account with one or more public depositories, and may deposit moneys in the depository and expend

moneys for purposes authorized by this chapter in the form of drafts made by the commission. The commission shall keep accurate records of all receipts, disbursements, and other financial transactions in accordance with generally accepted principles of accounting, available for audit by the state auditor. [1990 c 142 § 5.]

15.74.050 Obligations, liabilities, and claims. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principle, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1990 c 142 § 6.]

15.74.060 Assessments—Generally. To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment categories shall be based on the hardwood processor's production per calendar quarter. The assessment shall be levied based upon the following schedule:

CATEGORY	QUARTERLY PRODUCTION (THOUSAND TONS)	QUARTERLY ASSESSMENT
1	5 to 7.5	\$ 150
2	7.5 to 15	\$ 300
3	15 to 25	\$ 600
4	25 to 35	\$ 900
5	35 to 45	\$ 1,200
6	45 to 62.5	\$ 1,500
7	62.5 to 82.5	\$ 2,250
8	82.5 to 125	\$ 3,000
9	125 to 175	\$ 4,500
10	175 to 250	\$ 6,000
11	250 to 350	\$ 9,000
12	350 to 450	\$12,000
13	450 to 625	\$15,000
14	625 to 875	\$22,500
15	875 to 1125	\$30,000
16	Over 1125	\$35,000

The commission may develop by rule formulas for converting other units of measure to thousands of tons of production for determining the appropriate production category. The assessment shall be calculated based upon calendar quarters with the first assessment period beginning July 1, 1991. [1991 c 67 § 3; 1990 c 142 § 7.]

(2012 Ed.)

15.74.070 Assessments—Failure to pay. Any due and payable assessment levied under this chapter in such specified amount as may be determined by the commission shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the commission the full amount of such assessment or such other sum on or before the date due, the commission may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1991 c 67 § 2.]

15.74.900 Severability—1990 c 142. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 142 § 9.]

**Chapter 15.76 RCW
AGRICULTURAL FAIRS,
YOUTH SHOWS, EXHIBITIONS**

Sections

- 15.76.100 Declaration of public interest—Allocation of state funds authorized.
- 15.76.110 Definitions.
- 15.76.115 Fair fund—Created—Treasurer's transfer—Purpose.
- 15.76.120 Categories of fairs—Jurisdiction and organization.
- 15.76.130 Application for state allocation—Purposes—Form.
- 15.76.140 Eligibility requirements for state allocation.
- 15.76.150 Allocations from the fair fund—Considerations.
- 15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form.
- 15.76.165 Authorization for capital funding to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities—Contract requirements.
- 15.76.170 Fairs commission—Creation, terms, compensation, powers and duties.
- 15.76.180 Rules and regulations.

County fairs: Chapter 36.37 RCW.

County property, lease for agricultural purposes: RCW 36.34.145.

15.76.100 Declaration of public interest—Allocation of state funds authorized. It is hereby declared that it is in the public interest to hold agricultural fairs, including the exhibition of livestock and agricultural produce of all kinds, as well as related arts and manufactures; including products of the farm home and educational contest, displays, and demonstrations designed to train youth and to promote the welfare of farm people and rural living. Fairs qualifying hereunder shall be eligible for allocations from the state fair fund and for capital funding when appropriated to the department of agriculture, as provided in this chapter. [2012 c 221 § 1; 1961 c 61 § 1.]

15.76.110 Definitions. (1) "Agricultural fair" means a fair or exhibition which is intended to promote agriculture by

including a balanced variety of exhibits of livestock and agricultural products, as well as related arts and manufactures; including products of the farm home, and educational contests, displays, and demonstrations designed to train youth and to promote the welfare of farm people and rural living.

(2) "Department" means the state department of agriculture.

(3) "Director" means the director of agriculture.

(4) "Commission" means the fairs commission created by this chapter.

(5) "State allocations" means allocations from the state fair fund. [2012 c 221 § 2; 1961 c 61 § 2.]

15.76.115 Fair fund—Created—Treasurer's transfer—Purpose. The fair fund is created in the custody of the state treasury. All moneys received by the department of agriculture for the purposes of this fund and from RCW 67.16.105(7) shall be deposited into the fund. At the beginning of fiscal year 2002 and each fiscal year thereafter, the state treasurer shall transfer into the fair fund from the general fund the sum of two million dollars, except for fiscal year 2011 the state treasurer shall transfer into the fair fund from the general fund the sum of one million one hundred three thousand dollars, and except during fiscal year 2012 and fiscal year 2013 the state treasurer shall transfer into the fair fund from the general fund the sum of one million seven hundred fifty thousand dollars each fiscal year. Expenditures from the fund may be used only for assisting fairs in the manner provided in this chapter. Only the director of agriculture or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2011 1st sp.s. c 50 § 926; 2011 c 103 § 10; 2010 1st sp.s. c 37 § 912; 2001 2nd sp.s. c 16 § 1; 1998 c 345 § 2.]

Effective dates—2011 1st sp.s. c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011], except for section 951 of this act which takes effect June 30, 2011." [2011 1st sp.s. c 50 § 1802.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

15.76.120 Categories of fairs—Jurisdiction and organization. For the purposes of this chapter all agricultural fairs in the state which may become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but

one county fair in a single county: PROVIDED, HOWEVER, That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University or the office of the superintendent of public instruction, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living. [1993 c 163 § 1; 1991 c 238 § 74; 1961 c 61 § 3.]

Additional notes found at www.leg.wa.gov

15.76.130 Application for state allocation—Purposes—Form. For the purpose of encouraging agricultural fairs and training rural youth, the board of trustees of any fair or youth show may apply to the director of agriculture for state allocations as hereinafter set forth. Such application shall be in such form as the director may prescribe. [1961 c 61 § 4.]

15.76.140 Eligibility requirements for state allocation. (1) Before any agricultural fair may become eligible for state allocations it must have conducted two successful consecutive annual fairs immediately preceding application for such allocations, and have its application therefor approved by the director.

(2) Beginning January 1, 1994, the director may waive this requirement for an agricultural fair that through itself or its predecessor sponsoring organization has successfully operated at least two years as a county fair and that reorganizes as an area fair. [2001 c 157 § 1; 1995 c 374 § 71; 1965 ex.s. c 32 § 1; 1961 c 61 § 5.]

Additional notes found at www.leg.wa.gov

15.76.150 Allocations from the fair fund—Considerations. The director shall have the authority to make allocations from the state fair fund, including interest income under RCW 43.79A.040, exclusively as follows: Eighty-five percent to participating agricultural fairs, distributed according to the merit of such fairs measured by a merit rating to be set up by the director. This merit rating shall take into account such factors as area and population served, open and/or youth participation, attendance, gate receipts, number and type of exhibits, premiums and prizes paid, community support, evidence of successful achievement of the aims and purposes of the fair, extent of improvements made to grounds and facilities from year to year, and overall condition and appearance of grounds and facilities. The remaining fifteen percent of money in the state fair fund may be used for special assistance to any participating fair or fairs and for administrative expenses incurred in the administration of this chapter only, including expenses incurred by the fair commission as may be approved by the director: PROVIDED, That not more than five percent of the state fair fund may be used for such expenses.

The division and payment of funds authorized in this section shall occur at such times as the director may prescribe. [2002 c 313 § 113; 1965 ex.s. c 32 § 2; 1961 c 61 § 6.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form. Any state allocations made under this chapter to fairs or youth shows, other than fairs or youth shows operated by or for and under the control of one or more counties or other agencies, as defined in subsection (4) of RCW 15.76.120, shall be made only as a reimbursement in whole or in part for the payment of premiums and prizes awarded to participants in such fairs or youth shows. State allocations to fairs under the control of one or more counties shall be made to the county treasurer of the county in which the fair is held. State allocations to other publicly sponsored fairs or youth shows shall be made to such sponsor. The board of trustees of any private fair or youth show, as part of its application for any allocation under this chapter, and as a condition of such allocation, shall submit to the director a list of premiums and prizes awarded to participants in its last preceding fair or youth show. Such list shall contain the names of all premium and prize winners, a description of each prize or premium, including its amount or value, and the total values of all such awards. The list shall be in such form and contain such further information as the director may require, and shall be verified as to its accuracy by the oath of the president of the fair or youth show, together with that of the secretary or manager, subscribed thereon. [1961 c 61 § 7.]

15.76.165 Authorization for capital funding to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities—Contract requirements. (1) Subject to the availability of amounts appropriated for this specific purpose, the department may provide capital funding to local governments and nonprofit organizations, on a competitive basis, to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities in order to benefit participants and the fair-going public.

(2) The department shall develop and manage appropriate contracts

with the selected applicants, monitor project expenditures and grantee performance, report project and contract information, and exercise due diligence and other contract management responsibilities.

(a) The department shall include provisions in the contracts which require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities must be used for the express purpose of the grant.

(b) If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2012 c 221 § 3; 2005 c 443 § 2; 1973 c 117 § 1; 1969 c 85 § 1.]

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

15.76.170 Fairs commission—Creation, terms, compensation, powers and duties. There is hereby created a

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fairs commission to consist of the director of agriculture as ex officio member and chair, and seven members appointed by the director to be persons who are interested in fair activities; at least three of whom shall be from the east side of the Cascades and three from the west side of the Cascades and one member at large. The first appointment shall be: Three for a one year term, two for a two year term, and two for a three year term, and thereafter the appointments shall be for three year terms.

Appointed members of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses, in accordance with RCW 43.03.050 and 43.03.060 payable on proper vouchers submitted to and approved by the director, and payable from that portion of the state fair fund set aside for administrative costs under this chapter. The commission shall meet at the call of the chair, but at least annually. It shall be the duty of the commission to act as an advisory committee to the director, to assist in the preparation of the merit rating used in determining allocations to be made to fairs, and to perform such other duties as may be required by the director from time to time. [2010 c 8 § 6100; 1984 c 287 § 18; 1975-'76 2nd ex.s. c 34 § 21; 1975 1st ex.s. c 7 § 11; 1961 c 61 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

15.76.180 Rules and regulations. The director shall have the power to adopt such rules and regulations as may be necessary or appropriate to carry out the purposes of this chapter. [1961 c 61 § 9.]

Chapter 15.80 RCW WEIGHMASTERS

Sections

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15.80.300 Definitions—Application. Terms used in this chapter shall have the meaning given to them in RCW 15.80.310 through 15.80.400 unless the context where used shall clearly indicate to the contrary. [1969 ex.s. c 100 § 1.]

15.80.310 "Department." "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 100 § 2.]

15.80.320 "Director." "Director" means the director of the department or his or her duly appointed representative. [2010 c 8 § 6101; 1969 ex.s. c 100 § 3.]

15.80.330 "Person." "Person" means a natural person, individual, or firm, partnership, corporation, company, society, or association. This term shall import either the singular or plural, as the case may be. [1969 ex.s. c 100 § 4.]

15.80.340 "Licensed public weighmaster." "Licensed public weighmaster" also referred to as weighmaster, means any person, licensed under the provisions of this chapter, who weighs, measures or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure or count accepted as the accurate weight, or count upon which the purchase or sale of any commodity or upon which the basic charge or payment for services rendered is based. [1969 ex.s. c 100 § 5.]

15.80.350 "Weigher." "Weigher" means any person who is licensed under the provisions of this chapter and who is an agent or employee of a weighmaster and authorized by the weighmaster to issue certified statements of weight, measure or count. [1969 ex.s. c 100 § 6.]

15.80.360 "Vehicle." "Vehicle" means any device, other than a railroad car, in, upon, or by which any commodity, is or may be transported or drawn. [1969 ex.s. c 100 § 7.]

15.80.370 "Certified weight." "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a weighmaster or weigher in accordance with the provisions of this chapter or any regulation adopted thereunder. [1969 ex.s. c 100 § 8.]

15.80.380 "Commodity." "Commodity" means anything that may be weighed, measured or counted in a commercial transaction. [1969 ex.s. c 100 § 9.]

15.80.390 "Thing." "Thing" means anything used to move, handle, transport or contain any commodity for which a certified weight, measure or count is issued when such thing is used to handle, transport, or contain a commodity. [1969 ex.s. c 100 § 10.]

15.80.400 "Retail merchant." "Retail merchant" means and includes any person operating from a bona fide fixed or permanent location at which place all of the retail business of said merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities which have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location. [1969 ex.s. c 100 § 11.]

15.80.410 Director's duty to enforce—Adoption of rules. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act), as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 100 § 12.]

15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions. It shall be a violation of this chapter to transport by highway any hay, straw, or grain which has been purchased by weight or will be purchased by weight, unless it is weighed and a certified weight ticket is issued thereon, by the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay, straw, or grain is to be unloaded: PROVIDED, HOWEVER, That this section shall not apply to the following:

(1) The transportation of, or sale of, hay, straw, or grain by the primary producer thereof;

(2) The transportation of hay, straw, or grain by an agriculturalist for use in his or her own growing, or animal or poultry husbandry endeavors;

(3) The transportation of grain by a party who is either a warehouse operator or grain dealer and who is licensed under the grain warehouse laws and who makes such shipment in the course of the business for which he or she is so licensed;

(4) The transportation of hay, straw, or grain by retail merchants, except for the provisions of RCW 15.80.430 and 15.80.440;

(5) The transportation of grain from a warehouse licensed under the grain warehouse laws when the transported grain is consigned directly to a public terminal warehouse. [2011 c 336 § 416; 1969 ex.s. c 100 § 13.]

15.80.430 Certificates of weight and invoices to be carried with loads. Certificates of weight issued by licensed public weighmasters and invoices for sales by a retail merchant, if the commodity is being hauled by or for such retail merchant, shall be carried with all loads of hay, straw or grain when in transit. [1969 ex.s. c 100 § 14.]

15.80.440 Reweighing—Weighing—Variance from invoiced weight. The driver of any vehicle previously

weighed by a licensed public weighmaster may be required to reweigh the vehicle and load at the nearest scale.

The driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain may be required to weigh the vehicle and load at the nearest scale, and if the weight is found to be less than the amount appearing on the invoice, a copy of which is required to be carried on the vehicle, the director shall report the finding to the consignee and may cause such retail merchant to be prosecuted in accordance with the provisions of this chapter. [1969 ex.s. c 100 § 15.]

15.80.450 Weighmaster's license—Applications—Fee—Bond. Any person may apply to the director for a weighmaster's license. Such application shall be on a form prescribed by the director and shall include:

(1) The full name of the person applying for such license and if the applicant is a partnership, association or corporation, the full name of each member of the partnership or the names of the officers of the association or corporation;

(2) The principal business address of the applicant in this state and elsewhere;

(3) The names of the persons authorized to receive and accept service of summons and legal notice of all kinds for the applicant;

(4) The location of any scale or scales subject to the applicant's control and from which certified weights will be issued; and

(5) Such other information as the director feels necessary to carry out the purposes of this chapter.

Such annual application shall be accompanied by a license fee of fifty dollars for each scale from which certified weights will be issued and a bond as provided for in RCW 15.80.480. [2006 c 358 § 3; 1969 ex.s. c 100 § 16.]

Effective dates—2006 c 358: See note following RCW 19.94.175.

15.80.460 Weighmaster's license—Issuance—Expiration date. The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this chapter shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [2010 c 8 § 6102; 1991 c 109 § 7; 1971 ex.s. c 292 § 14; 1969 ex.s. c 100 § 17.]

Additional notes found at www.leg.wa.gov

15.80.470 Weighmaster's license—Renewal date—Penalty fee. If an application for renewal of any license provided for in this chapter is not filed prior to the expiration date, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license. [2010 c 8 § 6103; 1991 c 109 § 8; 1969 ex.s. c 100 § 18.]

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15.80.480 Surety bond. Any applicant for a weighmaster's license shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of one thousand dollars. The bond shall be of standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted hereunder. Said bond shall be to the state for the benefit of every person availing himself or herself of the services and certifications issued by a weighmaster, or weigher subject to his or her control. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face value of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. All such sureties on a bond, as provided herein, shall only be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [2010 c 8 § 6104; 1969 ex.s. c 100 § 19.]

15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee. Any weighmaster may file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from a scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

- (1) Name of the weighmaster;
- (2) The full name of the employee or agent and his or her resident address;
- (3) The position held by such person with the weighmaster;
- (4) The scale or scales from which such employee or agent will issue certified weights; and
- (5) Signature of the weigher and the weighmaster.

Such annual application shall be accompanied by a license fee of ten dollars. [2010 c 8 § 6105; 2006 c 358 § 4; 1969 ex.s. c 100 § 20.]

Effective dates—2006 c 358: See note following RCW 19.94.175.

15.80.500 Weigher's license—Issuance—Expiration date. Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he or she is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a

license or licenses. [2010 c 8 § 6106; 1991 c 109 § 9; 1969 ex.s. c 100 § 21.]

15.80.510 Duties of weighmaster. A licensed public weighmaster shall: (1) Keep the scale or scales upon which he or she weighs any commodity or thing, in conformity with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare, and net weights of any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his or her scale by an inspector authorized by the director, and issue a certificate of the weights thereof. [2010 c 8 § 6107; 1969 ex.s. c 100 § 22.]

15.80.520 Certification of weights—Impression seal—Fee—Annual renewal. Certification of weights shall be made by means of an impression seal, the impress of which shall be placed by the weighmaster or weigher making the weight determination upon the weights shown on the weight tickets. The impression seal shall be procured from the director upon the payment of a fee of five dollars, and such fee shall accompany the applicant's application for a weighmaster's license. The seal shall be retained by the weighmaster upon payment of an annual renewal fee of five dollars, and the fee shall accompany the annual renewal application for a weighmaster's license. Any replacement seal needed shall be procured from the director upon payment to the department of the cost for such replacement. An impression seal shall be used only at the scale to which it is assigned, and remains the property of the state and shall be returned forthwith to the director upon the termination, suspension, or revocation of the weighmaster's license. [1983 c 95 § 6; 1969 ex.s. c 100 § 23.]

15.80.530 Certified weight ticket—Form—Contents—Evidence. The certified weight ticket shall be of a form approved by the director and shall contain the following information:

- (1) The date of issuance;
- (2) The kind of commodity weighed, measured, or counted;
- (3) The name of owner, agent, or consignee of the commodity weighed;
- (4) The name of seller, agent or consignor;
- (5) The accurate weight, measure or count of the commodity weighed, measured or counted; including the entry of the gross, tare and/or net weight, where applicable;
- (6) The identifying numerals or symbols, if any, of each container separately weighed and the motor vehicle license number of each vehicle separately weighed;
- (7) The means by which the commodity was being transported at the time it was weighed, measured or counted;
- (8) The name of the city or town where such commodity was weighed;
- (9) The complete signature of weighmaster or weigher who weighed, measured or counted the commodity; and
- (10) Such other available information as may be necessary to distinguish or identify the commodity.

Such weight certificates when so made and properly signed and sealed shall be prima facie evidence of the accu-

racy of the weights, measures or count shown, as a certified weight, measure or count. [1969 ex.s. c 100 § 24.]

15.80.540 Copies of weight tickets. Certified weight tickets shall be made in triplicate, one copy to be delivered to the person receiving the weighed commodity at the time of delivery, which copy shall accompany the vehicle that transports such commodity, one copy to be forwarded to the seller by the carrier of the weighed commodity, and one copy to be retained by the weighmaster that weighed the vehicle transporting such commodity. The copy retained by the weighmaster shall be kept at least for a period of one year, and such copies and such other records as the director shall determine necessary to carry out the purposes of this chapter shall be made available at all reasonable business hours for inspection by the director. [1969 ex.s. c 100 § 25.]

15.80.550 Weighmaster or weigher to determine weights—Automatic devices. No weighmaster or weigher shall enter a weight value on a certified weight ticket that he or she has not determined and he or she shall not make a weight entry on a weight ticket issued at any other location: PROVIDED, HOWEVER, That if the director determines that an automatic weighing or measuring device can accurately and safely issue weights in conformance with the purpose of this chapter, he or she may adopt a regulation to provide for the use of such a device for the issuance of certified weight tickets. The certified weight ticket shall be so prepared that it will show the weight or weights actually determined by the weighmaster. In any case in which only the gross, the tare or the net weight is determined by the weighmaster he or she shall strike through or otherwise cancel the printed entries for the weights not determined or computed by him or her. [2010 c 8 § 6108; 1969 ex.s. c 100 § 26.]

15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices. A licensed public weighmaster shall in making a weight determination as provided for in this chapter, use a weighing device that is suitable for the weighing of the type and amount of commodity being weighed. The director shall cause to be tested for proper state standards of weight all weighing or measuring devices utilized by any licensed public weighmaster. Certified weights shall not be issued over a device that has been rejected or condemned for repair or use by the director until such device has been repaired. [1969 ex.s. c 100 § 27.]

15.80.570 Weighing devices—Rated capacity to exceed weight of load. A weighmaster shall not use a weighing device to determine the weight of a load when the weight of such load exceeds the manufacturer's maximum rated capacity for such weighing device. If upon inspection the director declares that the maximum rated capacity of any weighing device is less than the manufacturer's maximum rated capacity, the weighmaster shall not weigh a load that exceeds the director's declared maximum rated capacity for such weighing device. [1969 ex.s. c 100 § 28.]

15.80.580 Weighing devices—Platform size to sufficiently accommodate vehicles. No weighmaster shall weigh a vehicle or combination of vehicles to determine the

weight of such vehicle or combination of vehicles unless the weighing device has a platform of sufficient size to accommodate such vehicle or combination of vehicles fully and completely as one entire unit. When a combination of vehicles must be broken up into separate units in order to be weighed as prescribed, each separate unit shall be entirely disconnected before weighing and a separate certified weight ticket shall be issued for each separate unit. [1969 ex.s. c 100 § 29.]

15.80.590 Denial, suspension, or revocation of licenses—Hearing. The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he or she finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter 34.05 RCW (administrative procedure act) concerning adjudicative proceedings. [2010 c 8 § 6109; 1989 c 175 § 52; 1969 ex.s. c 100 § 30.]

Additional notes found at www.leg.wa.gov

15.80.600 Hearings for denial, suspension or revocation of licenses—Notice—Location. For hearings for revocations, suspension, or denial of a license, the director shall give the licensee or applicant such notice as is required under the provisions of chapter 34.05 RCW, as enacted or hereafter amended. Such hearings shall be held in the county where the licensee resides. [1969 ex.s. c 100 § 31.]

15.80.610 Subpoenas—Oaths. The director, for the purposes of this chapter, may issue subpoenas to compel the attendance of witnesses, and/or the production of books and/or documents anywhere in the state. The party shall have opportunity to make his or her defense, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. [2010 c 8 § 6110; 1969 ex.s. c 100 § 32.]

15.80.620 Assuming to act as weighmaster or weigher. It shall be unlawful for any person not licensed pursuant to the provisions of this chapter to:

(1) Hold himself or herself out, in any manner, as a weighmaster or weigher; or

(2) Issue any ticket as a certified weight ticket. [2010 c 8 § 6111; 1969 ex.s. c 100 § 33.]

15.80.630 Falsifying weight tickets, weight or count—Unlawfully delegating—Presealing before weighing. It shall be unlawful for a weighmaster or weigher to falsify a certified weight ticket, or to cause an incorrect weight, measure, or count to be determined, or delegate his or her authority to any person not licensed as a weigher, or to pre-seal a weight ticket with his or her official seal before performing the act of weighing. [2010 c 8 § 6112; 1969 ex.s. c 100 § 34.]

15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty. Any person who shall mark, stamp, or write any false weight ticket, scale ticket, or weight certifi-

cate, knowing it to be false, and any person who influences, or attempts to wrongfully influence any licensed public weighmaster or weigher in the performance of his or her official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than three hundred sixty-four days in the county jail, or by both such fine and imprisonment. [2011 c 96 § 16; 2010 c 8 § 6113; 1969 ex.s. c 100 § 35.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

15.80.650 Violations—Penalty. (1) Except as provided in RCW 15.80.640 or subsection (2) of this section, any person violating any provision of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 109; 1969 ex.s. c 100 § 36.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

15.80.660 Collected moneys—Deposit. All moneys collected under this chapter shall be placed in the weights and measures account created in RCW 19.94.185. [1995 c 355 § 25.]

Additional notes found at www.leg.wa.gov

15.80.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 ex.s. c 100 § 37.]

15.80.910 Effective date—1969 ex.s. c 100. This act shall take effect on July 1, 1969. [1969 ex.s. c 100 § 38.]

15.80.920 Severability—1969 ex.s. c 100. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1969 ex.s. c 100 § 39.]

Chapter 15.83 RCW AGRICULTURAL MARKETING AND FAIR PRACTICES

Sections

15.83.005	Intent.
15.83.010	Definitions.
15.83.020	Negotiating agents—Association of producers—Accreditation.
15.83.030	Unlawful practices of handlers.
15.83.040	Unlawful practices of association of producers or members.
15.83.050	Violations of chapter—Complaint.
15.83.060	Director's authority—Recordkeeping—Cooperation.
15.83.070	Injury due to unlawful practices—Damages.
15.83.080	Unlawful practices—Civil penalty.
15.83.090	Injunction.
15.83.100	Rules.
15.83.110	Advisory committee.
15.83.900	Short title.
15.83.905	Severability—1989 c 355.

15.83.005 Intent. Agricultural products are produced by many individual farmers and ranchers located throughout the state. The efficient production and marketing of agricultural products by farmers, ranchers, and handlers is of vital concern to the welfare and general economy of the state. It is the purpose of this chapter to establish standards of fair practices required of handlers, producers, and associations of producers, with respect to certain agricultural commodities, to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

It is the intent of the legislature that a workable process be developed through which a fair price and other contract terms can be arrived at through negotiations between processors of agricultural products and an accredited association of producers, and that in developing rules and administering this chapter the director of agriculture shall recognize this intent. [1989 c 355 § 1.]

15.83.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiation agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means sweet corn and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the federal agriculture marketing act of 1929 or in section 1 of 42 Stat. 388.

(5) "Director" means the director of the department of agriculture.

(6) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(7) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date and concluding within thirty days of the normal planting date to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or

refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: PROVIDED, That neither party shall be required to disclose proprietary business or financial records or information.

(8) "Negotiating unit" means a negotiating unit approved by the director under RCW 15.83.020.

(9) "Person" means an individual, partnership, corporation, association, or any other entity.

(10) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

(11) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

(12) "Qualified commodity" means agricultural products as defined in subsection (3) of this section. [1989 c 355 § 2.]

15.83.020 Negotiating agents—Association of producers—Accreditation. (1) An association of producers may file an application with the director:

(a) Requesting accreditation to serve as the exclusive negotiating agent on behalf of its producer members who are within a proposed negotiating unit with respect to any qualified commodity;

(b) Describing geographical boundaries of the proposed negotiating unit;

(c) Specifying the number of producers and the quantity of products included within the proposed negotiating unit;

(d) Specifying the number and location of the producers and the quantity of products represented by the association; and

(e) Supplying any other information required by the director.

(2) Within a reasonable time after receiving an application under subsection (1) of this section, the director shall approve or disapprove the application in accordance with this section.

(a) The director shall approve the initial application or renewal if the director determines that:

(i) The association is owned and controlled by producers under the charter documents or bylaws of the association;

(ii) The association has valid and binding contracts with its members empowering the association to sell or negotiate terms of sale of its members' products or to negotiate for compensation for products produced under contract by its members;

(iii) The association represents a sufficient percentage of producers or that its members produce a sufficient percentage of agricultural products to enable it to function as an effective agent for producers in negotiating with a given handler as defined in rules promulgated by the department. In making

this finding, the director shall exclude any quantity of the agricultural products contracted by producers with producer-owned and controlled processing cooperatives with its members and any quantity of these products produced by handlers;

(iv) One of the association's functions is to act as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of the products of its members, or for compensation for products produced by its members under contract; and

(v) Accreditation would not be contrary to the policies established in RCW 15.83.005.

(b) If the director does not approve the application under (a) of this subsection, then the association of producers may file an amended application with the director. The director, within a reasonable time, shall approve the amended application if it meets the requirements set out in (a) of this subsection.

(3) At the discretion of the director, or upon submission of a timely filed petition by an affected handler or an affected association of producers, the association of producers accredited under this section may be required by the director to renew the application for accreditation by providing the information required under subsection (1) of this section. [1989 c 355 § 3.]

15.83.030 Unlawful practices of handlers. It shall be unlawful for any handler to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with an association of producers accredited under RCW 15.83.020 with respect to any qualified commodity: PROVIDED, That the obligation to negotiate does not require either party to agree to a proposal, to make a concession, or to enter into a contract;

(2) To coerce any producer in the exercise of his or her right to contract with, join, refrain from contracting with or joining, belong to an association of producers, or refuse to deal with any producer because of the exercise of that producer's right to contract with, join, or belong to an association or because of that producer's promotion of legislation on behalf of an association of producers;

(3) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of that producer's membership in or contract with an association of producers or because of that producer's promotion of legislation on behalf of an association of producers;

(4) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler;

(5) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association of producers;

(6) To make knowingly false reports about the finances, management, or activities of associations of producers or handlers; or

(7) To conspire, agree, or arrange with any other person to do, aid, or abet any act made unlawful by this chapter. [1989 c 355 § 4.]

(2012 Ed.)

15.83.040 Unlawful practices of association of producers or members. It shall be unlawful for any accredited association of producers or members of such association to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with a handler for any qualified commodity for which the association is accredited under RCW 15.83.020;

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an individual producer, association of producers, or a member of an association;

(3) To knowingly make or circulate false reports about the finances, management, or activities of an association of producers or a handler;

(4) To coerce or intimidate a producer to enter into, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers;

(5) To conspire, agree, or arrange with any other person to do, aid, or abet any practice which is in violation of this chapter; or

(6) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to contract or negotiate with a processor. [1989 c 355 § 5.]

15.83.050 Violations of chapter—Complaint. (1) If any person is charged with violating any provision of this chapter, the director shall investigate the charges. If, upon investigation, the director has reasonable cause to believe that the person charged has violated the provision, the director shall issue and cause to be served upon the person, a complaint stating the charges. A hearing on the charges shall be conducted in accordance with the provisions of chapter 34.05 RCW concerning contested cases.

(2) No complaint may be issued based upon any act occurring more than six months before the filing of the charge with the director. At the discretion of the director, any other person may be allowed to intervene in the proceeding and to present testimony and other evidence.

(3) If upon the preponderance of the evidence taken, the director is of the opinion that any person named in the complaint has engaged in or is engaging in any prohibited practice, the director shall make and enter findings of fact and shall issue and cause to be served on that person, an order requiring that person to cease and desist from the practice and to take affirmative action to further the policies of this chapter. The order may also require the person to make reports from time to time showing the extent of compliance with the order. If, upon the preponderance of the testimony and other evidence, the director determines that the person named in the complaint has not engaged in or is not engaging in any prohibited practice, the director shall make and enter findings of fact and an order dismissing the complaint. [1989 c 355 § 6.]

15.83.060 Director's authority—Recordkeeping—Cooperation. If required to carry out the objectives of this chapter, including the conduct of any investigations or hearing:

(1) The director shall require any person to:

(a) Establish and maintain records;

(b) Make reports; and

(c) Provide other information as may be reasonably required.

(2) Any person subject to the provisions of this chapter shall provide the information, records, and reports reasonably required by the director, or make such material available to the director for inspection and/or copying at reasonable times and places, except that no person shall be required under this section to provide to the director proprietary business or financial records or information. [1989 c 355 § 7.]

15.83.070 Injury due to unlawful practices—Damages. A person injured in his or her business or property by reason of any violation of or conspiracy to violate RCW 15.83.030 or 15.83.040 may sue in a court of competent jurisdiction of the county in which such violation occurred without respect to the amount in controversy, and shall recover damages sustained, including reasonable attorneys' fees and costs of bringing the suit. Any action to enforce any cause of action under this section shall be forever barred unless commenced not later than two years after the cause of action accrues. [1989 c 355 § 8.]

15.83.080 Unlawful practices—Civil penalty. A person who violates RCW 15.83.030 or 15.83.040 may be assessed a civil penalty by the director of not more than five thousand dollars for each offense. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to chapter 34.05 RCW. In determining the amount of the penalty, the director shall consider the size of the business of the person charged, the penalty's affect [effect] on the person's ability to continue in business, and the gravity of the violation. If the director is unable to collect the civil penalty, the director shall refer the collection to the attorney general. [1989 c 355 § 9.]

15.83.090 Injunction. The director or any aggrieved producer, accredited association, or handler may bring an action to enjoin the violation of any provision of this chapter or any regulation made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 355 § 10.]

15.83.100 Rules. The director may promulgate such rules in accordance with chapter 34.05 RCW, and orders, as may be necessary to carry out this chapter. [1989 c 355 § 11.]

15.83.110 Advisory committee. The director shall establish an advisory committee consisting of the following persons: Six producers who are producers from names submitted by an association of producers, and six handlers subject to this chapter from names submitted by handlers. The advisory committee shall study and report on all issues related to this chapter. [1989 c 355 § 12.]

15.83.900 Short title. This chapter may be known and cited as the agricultural marketing and fair practices act. [1989 c 355 § 13.]

15.83.905 Severability—1989 c 355. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 355 § 14.]

Chapter 15.85 RCW AQUACULTURE MARKETING

Sections

15.85.010	Legislative declaration.
15.85.020	Definitions.
15.85.030	Department principal agency for aquaculture marketing support.
15.85.040	Rules.
15.85.050	Program to assist marketing and promotion of aquaculture products.
15.85.060	Private sector cultured aquatic products—Identification—Rules.

Aquaculture disease control: Chapter 77.115 RCW.

15.85.010 Legislative declaration. The legislature declares that aquatic farming provides a consistent source of quality food, offers opportunities of new jobs, increased farm income stability, and improves balance of trade.

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

The legislature finds that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agriculture industry within the state.

The legislature further finds that in order to ensure the maximum yield and quality of cultured aquatic products, the department of fish and wildlife should provide diagnostic services that are workable and proven remedies to aquaculture disease problems.

It is therefore the policy of this state to encourage the development and expansion of aquaculture within the state. It is also the policy of this state to protect wildstock fisheries by providing an effective disease inspection and control program and prohibiting the release of salmon or steelhead trout by the private sector into the public waters of the state and the subsequent recapture of such species as in the practice commonly known as ocean ranching. [1994 c 264 § 4; 1985 c 457 § 1.]

Release and recapture of salmon or steelhead prohibited: RCW 77.12.459.

15.85.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and ani-

mals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	Sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with RCW 77.70.210.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture. [2003 c 39 § 7; 1989 c 176 § 3; 1985 c 457 § 2.]

15.85.030 Department principal agency for aquaculture marketing support. The department is the principal state agency for providing state marketing support services for the private sector aquaculture industry. [1985 c 457 § 3.]

15.85.040 Rules. The department shall adopt rules under chapter 34.05 RCW to implement this chapter. [1985 c 457 § 7.]

15.85.050 Program to assist marketing and promotion of aquaculture products. The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to market and promote the use of its products. [1989 c 11 § 2; 1985 c 457 § 4.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

15.85.060 Private sector cultured aquatic products—Identification—Rules. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the department of fish and wildlife to administer and enforce Title 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the director of fish and wildlife to ensure that such rules enable the department of fish and wildlife to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section. [2003 c 39 § 8; 1994 c 264 § 5; 1988 c 36 § 6; 1985 c 457 § 5.]

Chapter 15.86 RCW ORGANIC PRODUCTS

Sections

15.86.010	Purpose.
15.86.020	Definitions.
15.86.030	Marketing of organic products—Standards—Restrictions—Evaluations to verify compliance.
15.86.060	Rules—National organic program—Violations—Penalties.
15.86.065	State organic program—Authority of department and director—Rules.
15.86.070	Rules—Certification program—Fees.
15.86.090	Mandatory certification—Exceptions.
15.86.110	Confidentiality of business related information.
15.86.120	Transitional product—Standards—Fees—Evaluations to verify compliance.
15.86.130	Brand name materials list of registered materials—Application for registration—Right to enter premises—Rules—Denial/suspension/revocation of a registration, grounds.
15.86.140	Brand name materials list—Fees.

Kosher food products: Chapter 69.90 RCW.

15.86.010 Purpose. The legislature recognizes a public benefit in:

(1) Establishing standards governing the labeling and advertising of agricultural products and commodities as organic products or transitional products;

(2) Providing certification under the national organic program for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic;"

(3) Providing access for Washington producers, processors, and handlers to domestic and international markets for organic products;

(4) Establishing a state organic program or obtaining federal accreditation as a certifying agent under the national organic program; and

(5) Establishing a brand name materials list for registration of inputs that comply with national, international, or

other organic standards. [2010 c 109 § 1; 2002 c 220 § 1; 1992 c 71 § 1; 1985 c 247 § 1.]

15.86.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certification" or "certified" means a determination documented by a certificate of organic operation made by a certifying agent that a production or handling operation is in compliance with the national organic program or with international standards.

(2) "Compost" means the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.

(3) "Crop production aid" means any substance, material, structure, or device that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

(4) "Department" means the state department of agriculture.

(5) "Director" means the director of the department of agriculture or the director's designee.

(6) "Fertilizer" means a single or blended substance containing one or more recognized plant nutrients which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(7) "Handler" means any person who sells, distributes, or packs organic or transitional products.

(8) "Label" means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(9) "Labeling" includes all written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

(10) "Livestock production aid" means any substance, material, structure, or device that is used to aid a producer in the production of livestock such as parasiticides, medicines, and feed additives.

(11) "Manufacturer" means a person that compounds, produces, granulates, mixes, blends, repackages, or otherwise alters the composition of materials.

(12) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling.

(13) "National organic program" means the program administered by the United States department of agriculture pursuant to 7 C.F.R. Part 205, which implements the federal organic food production act of 1990 (7 U.S.C. Sec. 6501 et seq.).

(14) "Organic certifying agent" means any third-party certification organization that is recognized by the director as being one which imposes, for certification, standards consistent with this chapter.

(15) "Organic product" means any agricultural product, in whole or in part, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of

organic and that is produced, handled, and processed in accordance with this chapter.

(16) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that contain biosolids as defined in chapter 70.95J RCW.

(17) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(18) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus, except a virus on or in a living human being or other animal, which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by rule.

(19) "Postharvest material" means any substance, material, structure, or device that is used in the postharvest handling of agricultural products.

(20) "Processing aid" means a substance that is added to a food:

(a) During processing, but is removed in some manner from the food before it is packaged in its finished form;

(b) During processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(c) For its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

(21) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing of an organic or transitional product.

(22) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(23) "Registrant" means the person registering a material on the brand name materials list under the provisions of this chapter.

(24) "Represent" means to hold out as or to advertise.

(25) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

(26) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(27) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the

effect of the pesticide and that is in a package or container separate from the pesticide. "Spray adjuvant" includes, but is not limited to, wetting agents, spreading agents, deposit builders, adhesives, emulsifying agents, deflocculating agents, and water modifiers or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect. "Spray adjuvant" does not include products that are only intended to mark the location where a pesticide is applied.

(28) "Transitional product" means any agricultural product that meets requirements for organic certification, except that the organic production areas have not been free of prohibited substances for thirty-six months. Use of prohibited substances must have ceased for at least twelve months prior to the harvest of a transitional product. [2010 c 109 § 2; 2002 c 220 § 2; 1992 c 71 § 2; 1989 c 354 § 32; 1985 c 247 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

15.86.030 Marketing of organic products—Standards—Restrictions—Evaluations to verify compliance.

(1) To be labeled, sold, or represented as an organic product, a product must be produced under standards established in this chapter or rules adopted pursuant to this chapter. A producer, processor, or handler shall not represent, sell, or offer for sale any agricultural product with the representation that the product is organic if the producer, processor, or handler knows, or has reason to know, that the product has not been produced, processed, or handled in accordance with standards established in this chapter or rules adopted pursuant to this chapter.

(2) The department may conduct evaluations in retail establishments to verify compliance with organic labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program. [2010 c 109 § 3; 2002 c 220 § 3; 1992 c 71 § 3; 1989 c 354 § 30; 1985 c 247 § 3.]

Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020: RCW 19.86.023.

Additional notes found at www.leg.wa.gov

15.86.060 Rules—National organic program—Violations—Penalties. (1) The director shall adopt rules, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the adoption of the national organic program and for the proper administration of this chapter.

(2)(a) The director shall issue orders to producers, processors, or handlers whom the director finds are violating RCW 15.86.030 or 15.86.090 or rules adopted pursuant to this chapter, to cease their violations and desist from future violations.

(b) Whenever the director finds that a producer, processor, or handler has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of:

(i) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and

(ii) One thousand dollars. [2010 c 109 § 4; 2002 c 220 § 4; 1992 c 71 § 7; 1985 c 247 § 6.]

(2012 Ed.)

15.86.065 State organic program—Authority of department and director—Rules. (1) The department is authorized to take such actions, conduct proceedings, and enter orders as permitted or contemplated for a state organic program or certifying agent under the national organic program.

(2) The director may deny, suspend, or revoke a certification provided for in this chapter if the director determines that an applicant or certified person has violated this chapter or rules adopted pursuant to this chapter.

(3) The program shall not be inconsistent with the requirements of the national organic program.

(4) The department shall adopt rules necessary to implement this section. [2010 c 109 § 5; 2002 c 220 § 7.]

15.86.070 Rules—Certification program—Fees. (1) The director may adopt rules establishing a program for certifying producers, processors, and handlers as meeting state, national, or international standards for organic or transitional products.

(2) The rules:

(a) May govern, but are not limited to governing:

(i) The number and scheduling of on-site visits, both announced and unannounced, by certification personnel;

(ii) Recordkeeping requirements; and

(iii) The submission of product samples for chemical analysis; and

(b) Shall include a fee schedule that will provide for the recovery of the full cost of the program.

(3) All fees collected under this chapter shall be deposited in an account within the agricultural local fund. The revenue from such fees shall be used solely for carrying out the provisions of this chapter, and no appropriation is required for disbursement from the fund.

(4) The director may employ such personnel as are necessary to carry out the provisions of this chapter. [2010 c 109 § 6; 2002 c 220 § 5; 1997 c 303 § 4; 1992 c 71 § 10; 1989 c 354 § 34; 1987 c 393 § 12.]

Findings—1997 c 303: See note following RCW 43.135.055.

Additional notes found at www.leg.wa.gov

15.86.090 Mandatory certification—Exceptions. (1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or a recognized organic certifying agent.

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

(a) Final retailers of organic products that do not process organic products; or

(b) Producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers. [2010 c 109 § 7; 2002 c 220 § 6; 1992 c 71 § 8.]

Additional notes found at www.leg.wa.gov

15.86.110 Confidentiality of business related information. (1) Except as provided in subsection (2) of this section, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying under chapter 42.56 RCW.

(2) Applications for certification under this chapter and laboratory analyses pertaining to that certification shall be available for public inspection and copying. [2005 c 274 § 218; 1992 c 71 § 11.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

15.86.120 Transitional product—Standards—Fees—Evaluations to verify compliance. (1) To be labeled, sold, or represented as transitional products, agricultural products must comply with transitional product standards specified in this chapter and rules adopted pursuant to this chapter, including no application of substances prohibited under the national organic program within one year immediately preceding harvest.

(2) A producer, processor, or handler may not represent, sell, or offer for sale any agricultural product as a transitional product if the producer, processor, or handler knows or has reason to know that the product does not comply with transitional product standards specified in this chapter or rules adopted pursuant to this chapter.

(3)(a) The department may set and collect transitional certification fees, including fees for application for transitional certification, renewal of transitional certification, inspections, and sampling. Collected fees are subject to provisions specified in RCW 15.86.070.

(b) The fee for application for transitional certification is fifty dollars per site in addition to any organic certification application fees established under this chapter. The department may increase this fee by rule as necessary to cover costs of provision of services.

(4) The department may conduct evaluations in retail establishments to verify compliance with transitional labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program. [2010 c 109 § 8.]

15.86.130 Brand name materials list of registered materials—Application for registration—Right to enter premises—Rules—Denial/suspension/revocation of a registration, grounds. (1) The department may establish a brand name materials list of registered materials that are approved for use in organic production, processing, or handling in accordance with the national organic program or international standards. Registration of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the brand name materials list.

(2)(a) Manufacturers of materials may submit an application to the department for registration of a material on the brand name materials list. Applications must be made on a form designated by the department, and must include:

- (i) The name and address of the manufacturer;
- (ii) The name and address of the manufacturer's representative making the representations in the application;
- (iii) The brand name that the material is sold under;
- (iv) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;

(v) The complete formula of the material, including the active and inert ingredients;

(vi) A description of the manufacturing process, including all materials used for the extraction and synthesis of the material, if appropriate;

(vii) The intended uses of the product;

(viii) The source or supplier of all ingredients;

(ix) The required fee for registration or renewal; and

(x) Any additional information required by rule.

(b) If any change to the information provided in an application occurs at any time after an application is submitted, the registrant must immediately submit corrected information to the department for review. Failure by the registrant to provide corrections to information provided in the application may result in suspension or revocation of the registration.

(c) By submitting an application for registration on the brand name materials list, the applicant expressly consents to jurisdiction of the state of Washington in all matters related to the registration.

(d) Applications for registration on the brand name materials list are governed by chapter 34.05 RCW.

(3)(a) By applying for registration on the brand name materials list, the registrant expressly grants to the department or other organic certifying agent or inspection agent approved by the national organic program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(i) Inspect the portion of the premises where the material, inputs, or ingredients are stored, produced, manufactured, packaged, or labeled;

(ii) Inspect records related to the sales, storage, production, manufacture, packaging, or labeling of the material, inputs, or ingredients; and

(iii) Obtain samples of materials, inputs, and ingredients.

(b) Should the registrant refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records or fails to provide samples as provided in this section.

(c) Required inspections may be conducted by department personnel, by an organic certifying agent, or by another inspection agent approved by the national organic program. The department may establish by rule evaluation criteria for review of inspection reports conducted by an organic certifying agent or inspection agent approved by the national organic program.

(4) The director may adopt rules necessary to implement the brand name materials list, including but not limited to:

(a) Fees related to registration;

(b) The number and scheduling of inspections, both announced and unannounced;

(c) Recordkeeping requirements;

(d) Additional application requirements;

(e) Labeling of registered materials; and

(f) Chemical analysis of material samples.

(5)(a) The department may establish a brand name materials list to register materials approved for use under:

(i) National organic program standards; or

(ii) International or additional organic standards.

(b) The director may review materials registered on the brand name materials list as approved for use under the national organic program for compliance with specific international or additional organic standards as designated by rule. A registered material that complies with a specific international or additional organic standard may also be registered as approved under that standard.

(6) Registration of a material on the brand name materials list under this chapter does not guarantee acceptance for use in organic production or processing by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material registered on the brand name materials list.

(7) The director may deny, suspend, or revoke a registration on the brand name materials list if the director determines that a registrant has:

(a) Failed to meet the registration criteria established in this chapter or rules adopted pursuant to this chapter; or

(b) Violated any other provision of this chapter or rules adopted pursuant to this chapter. [2010 c 109 § 9.]

15.86.140 Brand name materials list—Fees. (1) The department is authorized to set and collect fees for application for registration, renewal of registration, inspections, and sampling for the brand name materials list. Collected fees are subject to provisions specified in RCW 15.86.070. The department may increase by rule fees established in this section as necessary to cover costs of provision of services.

(2)(a) The application fee for registration of a pesticide, spray adjuvant, processing aid, livestock production aid, or postharvest material is:

(i) Five hundred dollars per material for an initial registration; and

(ii) Three hundred dollars per material for renewing a registration.

(b) The application fee for registration of a fertilizer, soil amendment, organic waste-derived material, compost, animal manure, or crop production aid is:

(i) Four hundred dollars per material for an initial registration; and

(ii) Two hundred dollars per material for renewing a registration.

(3)(a) Renewal applications postmarked after October 31st must include, in addition to the renewal fee, a late fee of:

(i) One hundred dollars per material for applications postmarked after October 31st;

(ii) Two hundred dollars per material for applications postmarked after November 30th; and

(iii) Three hundred dollars per material for applications postmarked after December 31st.

(b) Renewal applications received after February 2nd will not be accepted, and applicants must reapply as new applicants.

(4) Inspections and any additional visit that must be arranged must be billed at forty dollars per hour plus travel costs and mileage, charged at the rate established by the office of financial management.

(5) Chemical analysis of material samples, if required for registration or requested by the applicant, must be billed at a rate established by the laboratory services division of the

department of agriculture or at cost for analyses performed by another laboratory.

(6) Requests for expedited reviews may be submitted and, if approved, must be billed at forty dollars per hour.

(7) The department may assess compliance with an international or additional organic standard for materials registered on the brand name materials list as approved for use under the national organic program. Requests for additional assessments of materials approved under the national organic program must be billed at a rate of one hundred dollars per product for each standard. [2010 c 109 § 10.]

Chapter 15.88 RCW WINE COMMISSION

Sections

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15.88.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy.

(2) The sale in the state and export to other states and abroad of wine made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and have an important stabilizing effect on prices received by agricultural producers. Development of exports of these commodities abroad will contribute favorably to the balance of trade of the United States and of the state. The sale and export are therefore affected with the public interest.

(3) The production of wine grapes in the state is a new and important segment of Washington agriculture which has potential for greater contribution to the economy of the state if it undergoes healthy development.

(4) The general welfare of the people of the state will be served by healthy development of the activities of growing

and processing wine grapes, which development will improve the tax bases of local communities in which agricultural land and processing facilities are located, and obviate the need for state and federal funding of local services. The industries are therefore affected with the public interest.

(5) Creation of a commission for the public purpose of administering the revenue of the commission under RCW 66.24.210(3) for the enhancement of production of wine grapes and wine and the marketing of Washington wine will materially advance the industries of growing and processing wine grapes and thereby the interests of the citizens of the state. [1987 c 452 § 1.]

15.88.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the Washington wine commission.

(2) "Director" means the director of agriculture or the director's duly appointed representative.

(3) "Department" means the department of agriculture.

(4) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(5) "Grower" means a person who has at least five acres in production of vinifera grapes.

(6) "Growers' association" means a nonprofit association of Washington producers of vinifera grapes, whether or not incorporated, which the director finds to comprise the interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group of growers of vinifera grapes within the state identified by the director as fairly representing growers of vinifera grapes within the state.

(7) "Vinifera grapes" means the agricultural product commonly known as VITIS VINIFERA and those hybrid of VITIS VINIFERA which have predominantly the character of VITIS VINIFERA.

(8) "Producer" means any person or other entity which grows within the state vinifera grapes or any person or other entity licensed under Title 66 RCW to produce within the state wine made predominantly from vinifera grapes.

(9) "Wine producer" means any person or other entity licensed under Title 66 RCW to produce within the state wine from vinifera grapes.

(10) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.

(11) "Western Washington" means that portion of the state lying west of the Cascade mountain range.

(12) "Wine" for the purposes of this section shall be as defined in RCW 66.04.010.

(13) "Wine institute" means a nonprofit association of Washington wine producers, whether or not incorporated, which the director finds to comprise interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group composed of all such producers identified as actively engaged in the production of wine within the state.

(14) "Handler" means any Washington winery, or processor, juicer, grape broker, agent, or person buying or

receiving vinifera grapes to be passed on or exported either as grapes, juice, or wine. [1988 c 257 § 6; 1987 c 452 § 2.]

15.88.025 Regulating wine grapes and wine—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involves the wine industry. In order to develop and promote wine grapes and wine as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its wine grapes and wine be properly promoted by (a) enabling the wine industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing of wine grapes and wines they produce; and (b) working to stabilize the wine industry by increasing markets for wine grapes and wine within the state, the nation, and internationally;

(2) That wine grape growers and wine producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the wine grape growers' and wine producers' ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wine industry be clearly expressed; that adequate protection be given to agricultural commodities, uses, activities, and operations; and that wine grapes and wine be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of wine grapes and wine in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of wine grapes and wine;

(d) Increase the knowledge of the qualities and value of Washington's wine grapes and wine; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of wine grapes and wine;

(4) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(5) That the production and marketing of wine grapes and wine is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the wine grape and wine industry include:

(a) Organic products act under chapter 15.86 RCW;

(b) Horticultural pests and diseases under chapter 15.08 RCW;

(c) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(d) Planting stock under chapter 15.14 RCW;

(e) Washington pesticide control act under chapter 15.58 RCW;

(f) Insect pests and plant diseases under chapter 17.24 RCW;

(g) Wholesale distributors and suppliers of wine and malt beverages under chapter 19.126 RCW;

(h) Weights and measures under chapter 19.94 RCW;

(i) Title 66 RCW, alcoholic beverage control;

(j) Title 69 RCW, food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(k) Chapter 69.07 RCW, Washington food processing act;

(l) 27 U.S.C., Secs. 201 through 211, 213 through 219a, and 122A;

(m) 27 C.F.R., Parts 1, 6, 9, 10, 12, 16, 240, 251, 252; and

(n) Rules under Titles 16 and 314 WAC, and rules adopted under chapter 15.88 RCW. [2011 c 103 § 30; 2002 c 313 § 110.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.88.030 Wine commission created—Composition.

(1) There is created an agricultural commodity commission to be known and designated as the Washington wine commission. The commission shall be composed of twelve voting members and one nonvoting member; five voting members shall be growers, five voting members shall be wine producers, one voting member shall be the director, and one voting member shall be a wine distributor licensed under RCW 66.24.200. Of the grower members, at least one shall be a person who does not have over fifty acres of vinifera grapes in production, at least one shall be a person who has over one hundred acres of vinifera grapes in production, and two may be persons who produce and sell their own wine. Of the wine producer members, at least one shall be a person producing not more than twenty-five thousand gallons of wine annually, at least one shall be a person producing over one million gallons of wine annually, and at least two shall be persons who produce wine from their own grapes. In addition, at least one member shall be a wine producer located in western Washington and at least two members shall be wine producers located in eastern Washington.

(2) The commission shall have one nonvoting member who is a wine producer in this state whose principal wine or wines are produced from fruit other than vinifera grapes.

(3) Seven voting members of the commission constitute a quorum for the transaction of any business of the commission.

(4) Each voting member of the commission shall be a citizen and resident of this state and over the age of twenty-one years. Each voting member, except the member holding position eleven, must be or must have been engaged in that phase of the grower or wine producer industry that he or she is appointed to represent, and must during his or her term of office derive a substantial portion of income therefrom, or have a substantial investment in the growing of vinifera grapes or the production of wine from vinifera grapes as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the growing of vinifera grapes or wine production from vinifera

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grapes; or the manager or executive officer of such a corporation. These qualifications apply throughout each member's term of office. This subsection does not apply to the director. [2003 c 396 § 38; 1997 c 321 § 40; 1988 c 254 § 12; 1987 c 452 § 3.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Additional notes found at www.leg.wa.gov

15.88.040 Designation of commission members—Terms. The appointed voting positions on the commission shall be designated as follows: The wine producers shall be designated positions one, two, three, four, and five; the growers shall be designated positions six, seven, eight, nine, and ten; the wine wholesaler shall be position eleven; and the director shall be position number thirteen. The nonvoting industry member shall be designated position number twelve. The member designated as filling position one shall be a person producing over one million gallons of wine annually. The member designated as position one shall be the sole representative, directly or indirectly, of the producer eligible to hold position one and in no event shall that producer directly or indirectly control more than fifty percent of the votes of the commission.

Except for position thirteen, the regular terms of office shall be three years from the date of appointment and until their successors are appointed. However, the first terms of the members appointed upon July 1, 1987, shall be as follows: Positions one, six, and eleven shall terminate July 1, 1990; positions two, four, seven, and nine shall terminate July 1, 1989; and positions three, five, eight, and ten shall terminate July 1, 1988. The term of the initial nonvoting industry member shall terminate July 1, 1990. [2003 c 396 § 39; 1988 c 254 § 13; 1987 c 452 § 4.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.88.050 Appointment of members—Travel expenses. (1) The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made by the growers' association and the wine institute as the persons recommended for appointment as members of the commission. In appointing persons to the commission, the director shall seek to ensure as nearly as possible a balanced representation on the commission which would reflect the composition of the growers and wine producers throughout the state as to number of acres cultivated and amount of wine produced.

(2) The appointment shall be carried out immediately subsequent to July 1, 1987, and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission under RCW 15.88.040.

(3) In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of the position shall immediately be filled by appointment by the director.

(4) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2003 c 396 § 40; 2002 c 313 § 111; 1987 c 452 § 5.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.88.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1987 c 452 § 6.]

15.88.070 Commission powers and duties. The powers and duties of the commission include:

(1) To elect a chair and such officers as the commission deems advisable. The officers shall include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its own governance, which shall provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To do all things reasonably necessary to effect the purposes of this chapter. However, the commission shall have no legislative power;

(3) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(4) To receive donations of wine from wineries for promotional purposes;

(5) To engage directly or indirectly in the promotion of Washington wine, including without limitation the acquisition in any lawful manner and the dissemination without charge of wine, which dissemination shall not be deemed a sale for any purpose and in which dissemination the commission shall not be deemed a wine producer, supplier, or manufacturer of any kind or the clerk, servant, or agent of a producer, supplier, or manufacturer of any kind. Such dissemination shall be for agricultural development or trade promotion, which may include promotional hosting and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of wine, or of research related to such marketing, advertising, or sale;

(6) To acquire and transfer personal and real property, establish offices, incur expense, enter into contracts (including contracts for creation and printing of promotional literature, which contracts shall not be subject to *chapter 43.78

RCW, but which shall be cancelable by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries). The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(7) To maintain such account or accounts with one or more qualified public depositories as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(10) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission or other entity for the purpose of promoting the general welfare of the vinifera grape industry and particularly for the purpose of assisting in the sale and distribution of Washington wine in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington wine in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds; and

(11) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter. [2010 c 8 § 6114; 1987 c 452 § 7.]

***Reviser's note:** Chapter 43.78 RCW was entirely repealed or recodified by 2011 1st sp.s. c 43 § 306.

15.88.073 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising, promotion, and education of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 42.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.88.075 Commission speaks for state—Director’s oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to wine grapes and wine. [2003 c 396 § 43.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.88.080 Research, promotional, and educational campaign. The commission shall create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account the information adduced thereby in the discharge of its duties under this chapter. [1987 c 452 § 8.]

15.88.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign such goals as will serve the needs of producers, which may include, without limitation, efforts to:

- (1) Establish Washington wine as a major factor in markets everywhere;
- (2) Promote Washington wineries as tourist attractions;
- (3) Encourage favorable reporting of Washington wine and wineries in the press throughout the world;
- (4) Establish the state in markets everywhere as a major source of premium wine;
- (5) Encourage favorable legislative and regulatory treatment of Washington wine in markets everywhere;
- (6) Foster economic conditions favorable to investment in the production of vinifera grapes and Washington wine;
- (7) Advance knowledge and practice of production of wine grapes in this state;
- (8) Discover and develop new and improved vines for the reliable and economical production of wine grapes in the state; and
- (9) Advance knowledge and practice of the processing of wine grapes in the state. [1987 c 452 § 9.]

15.88.100 Commission members’ votes weighted—Exception. (1) Except as provided in subsection (2) of this section, the vote of each of the voting members of the commission shall be weighted as provided by this subsection for the transaction of any of the business of the commission. The total voting strength of the entire voting membership of the commission shall be twelve votes. The vote of position one shall be equal to the lesser of the following: Six and one-half votes; or eleven votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of

the membership of the commission shall be divided equally among the remaining members of the commission.

(2) In the event that the percentage of wine produced by the producer represented by position one falls below twenty-five percent of the wine produced in this state, the weighted voting mechanism provided for in subsection (1) of this section shall cease to be effective. In that case, the voting shall be based on one vote per position. [2003 c 396 § 41; 1988 c 254 § 14; 1987 c 452 § 10.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Additional notes found at www.leg.wa.gov

15.88.120 List of growers of vinifera grapes—Reporting system. (1) The commission shall cause a list to be prepared of all Washington growers from any information available from the department, growers’ association, or wine producers. This list shall contain the names and addresses of all persons who grow vinifera grapes for sale or use by wine producers within this state and the amount (by tonnage) of vinifera grapes produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up to date in accordance with evidence and information available to the commission on or before December 31st of each year. For all purposes of giving notice and holding referendums, the list on hand, corrected up to the day next preceding the date for issuing notices or ballots as the case may be, is, for purposes of this chapter, deemed to be the list of all growers entitled to notice or to assent or dissent or to vote.

(2) The commission shall develop a reporting system to document that the vinifera grape growers in this state are reporting quantities of vinifera grapes grown and subject to the assessment as provided in RCW 15.88.130. [1988 c 257 § 1.]

15.88.130 Annual assessment on harvested vinifera grapes—Approval by referendum—Rules. (1) Pursuant to approval by referendum in accordance with RCW 15.88.140, commencing on July 1, 1989, there shall be levied, and the commission shall collect, upon all vinifera grapes grown within this state an annual assessment of three dollars per ton of vinifera grapes harvested to be paid by the grower of the grapes.

(2) The commission shall recommend rules to the director prescribing the time, place, and method for payment and collection of this assessment. For such purpose, the commission may recommend that the director, by rule, require the wine producers or handlers within this state to collect the grower assessments from growers whose vinifera grapes they purchase or accept delivery and remit the assessments to the commission, and provide for collecting assessments from growers who ship directly out of state.

(3) After considering any recommendations made under subsection (2) of this section, the director shall adopt rules, in accordance with chapter 34.05 RCW, prescribing the time, place, and method for the payment and collection of the assessment levied under this section and approved under RCW 15.88.140. [1988 c 257 § 2.]

15.88.140 Referendum determining grower participation—Effect. (1) For purposes of determining grower participation in the commission and assessment under RCW 15.88.130, the director shall conduct a referendum among all vinifera grape growers within the state. The requirements of assent or approval of the referendum will be held to be complied with if: (a) At least fifty-one percent by numbers of growers replying in the referendum vote affirmatively or at least fifty-one percent by acreage of those growers replying in the referendum vote affirmatively; and (b) thirty percent of all vinifera grape growers and thirty percent by acreage have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted on or before September 15, 1988.

(2) If the director determines that the requisite assent has been given, the director shall direct the commission to put into force the assessment in RCW 15.88.130.

(3) If the director determines that the requisite assent has not been given, the director shall direct the commission not to levy the assessment provided in RCW 15.88.130. If the requisite assent has not been given, the commission shall not continue to specifically foster the interests of vinifera grape growers. [1988 c 257 § 3.]

15.88.150 Deposit of moneys. The commission shall deposit moneys collected under RCW 15.88.130 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. None of the provisions of RCW 43.01.050 apply to this account or to the moneys received, collected, or expended as provided in RCW 15.88.120 through 15.88.160. [1988 c 257 § 4.]

15.88.160 Assessment constitutes debt—Penalty for nonpayment—Civil action. A due and payable assessment levied in such specified amount as determined by the commission under RCW 15.88.130 constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a person fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay any such due and payable assessment or other such sum, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [1988 c 257 § 5.]

15.88.170 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between

the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 219; 2002 c 313 § 70.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.88.180 Funding staff support—Rules—Costs of implementing RCW 15.88.073. (1) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director.

(2) The costs incurred by the department associated with the implementation of RCW 15.88.073 shall be paid for by the commission. [2003 c 396 § 44; 2002 c 313 § 76.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.88.190 Commission must assist legislative gift center—Selection of Washington wines. The commission must assist the legislative gift center in selecting the Washington wines the legislative gift center will sell as provided in RCW 44.73.015. [2009 c 228 § 4.]

Findings—Intent—2009 c 228: See note following RCW 66.12.195.

15.88.900 Construction—1987 c 452. This act shall be liberally construed to effectuate its purposes. [1987 c 452 § 19.]

15.88.901 Effective dates—1987 c 452. (1) Sections 1 through 9 and 11 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

(2) Section 10 of this act shall take effect July 1, 1989. [1987 c 452 § 21.]

15.88.902 Severability—1987 c 452. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 452 § 20.]

Chapter 15.89 RCW WASHINGTON BEER COMMISSION

Sections

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15.89.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy;

(2) The sale in this state and export to other states and abroad of beer made in this state contribute substantial benefits to the economy of the state and provide a large number of jobs and sizeable tax revenues;

(3) The production of beer in this state is a new and important segment of Washington agriculture that has potential for greater contribution to the economy of the state if it undergoes continued development; and

(4) The general welfare of the people of this state will be served by continued development of the activities of the production of beer, that will improve the tax bases of local communities where agricultural land and processing facilities are located, and reduce the need for state and federal funding of local services. The industries are therefore affected with the public interest. [2006 c 330 § 1.]

15.89.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beer" means any malt beverage or malt liquor as the terms are defined in chapter 66.04 RCW.

(2) "Commission" means the Washington beer commission.

(3) "Department" means the department of agriculture.

(4) "Director" means the director of the department or the director's duly authorized representative.

(5) "Fiscal year" means the twelve-month period beginning with January 1st of any year and ending December 31st.

(6) "Producer" means any person or other entity licensed under Title 66 RCW to produce beer within Washington.

(7) "Referendum" means a vote by producers that is conducted by secret ballot. [2011 c 54 § 1; 2006 c 330 § 2.]

15.89.025 Regulating beer—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involve the beer

industry. In order to develop and promote beer as part of an existing comprehensive scheme to regulate those products, the legislature declares that:

(1) It is vital to the continued economic well-being of the citizens of this state and their general welfare that beer produced in Washington state be properly promoted;

(2) It is in the overriding public interest that support for the Washington beer industry be clearly expressed and that beer be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beer;

(c) Increase the knowledge of the qualities and value of Washington's beer; and

(d) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beer;

(3) This chapter is enacted in the exercise of the police powers of this state to protect the health, peace, safety, and general welfare of the people of this state; and

(4) The production and marketing of beer is a highly regulated industry and this chapter and the rules adopted under it are only one aspect of the regulated industry. Other laws applicable to the beer industry include:

(a) The organic products act, chapter 15.86 RCW;

(b) The wholesale distributors and suppliers of malt beverages, chapter 19.126 RCW;

(c) Weights and measures, chapter 19.94 RCW;

(d) Title 66 RCW, alcoholic beverage control;

(e) Title 69 RCW, food, drugs, cosmetics, and poisons;

(f) 21 C.F.R. as it relates to general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(g) Chapter 69.07 RCW, Washington food processing act;

(h) 27 U.S.C. Secs. 201 through 211, 213 through 219a, and 122A;

(i) 27 C.F.R. Parts 1, 6, 9, 10, 12, 16, 240, 251, and 252; and

(j) Rules under Title 314 WAC. [2011 c 103 § 31; 2006 c 330 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.89.030 Washington beer commission created—Composition. (1) Subject to the referendum conducted under RCW 15.89.040, there is created an agricultural commodity commission, to be known as the Washington beer commission. The commission shall be comprised of seven voting members; six members shall be producers and one voting member shall be the director.

(2) Five voting members of the commission constitute a quorum for the transaction of any commission business.

(3) Each producer member shall be a citizen and resident of this state and over the age of twenty-one. Each producer member must be engaged in producing beer, and must, during his or her term of office, derive a substantial portion of income from the production of beer, or have a substantial investment in the production of beer as an owner, lessee, part-

ner, or the manager or executive officer of such a corporation. No more than one board member may be part of the same person as defined by RCW 15.04.010. These qualifications apply throughout each member's term of office but do not apply to the director.

(4) The producer members shall serve three-year terms. Of the initial voting members, two members shall be appointed for a one-year term, two members shall be appointed for a two-year term, and two members shall be appointed for a three-year term. [2006 c 330 § 4.]

15.89.040 Director's duties—Referendum of beer producers. (1) Upon receipt of a petition containing the signatures of five beer producers from a statewide Washington state craft brewing trade association or from other producers to implement this chapter and to determine producer participation in the commission and assessment under this chapter, the director shall:

(a) Conduct a referendum of beer producers. The requirements of assent or approval of the referendum are met if:

(i) At least fifty-one percent by numbers of producers participating in the referendum vote affirmatively; and

(ii) Thirty percent of the producers and thirty percent of the production have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted within sixty days of receipt of the petition; and

(b) Establish a list of beer producers from information provided by the petitioners, by obtaining information on beer producers from applicable producer organizations or associations or other sources identified as maintaining the information. In establishing a current list of beer producers and their individual production, the director shall use the beer producer's name, mailing address, and production by the producer in the preceding fiscal year. Information on each producer shall be mailed to each beer producer on record with the director for verification. All corrections shall be filed with the director within twenty days from the date of mailing. The list of producers shall be kept in a file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter. The director shall provide the commission the list of producers after assent in a referendum as provided in this section.

(2) If the director determines that the requisite assent has been given in the referendum conducted under subsection (1) of this section, the director shall:

(a) Within sixty days after assent of the referendum held, appoint the members of the commission; and

(b) Direct the commission to put into force the assessment as provided for in RCW 15.89.110.

(3) If the director determines that the requisite assent has not been given in the referendum conducted under subsection (1) of this section, the director shall take no further action to implement or enforce this chapter.

(4) Upon completion of the referendum conducted under subsection (1) of this section, the department shall tally the results of the vote and provide the results to producers. If a producer disputes the results of a vote, that producer within

sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount. Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed.

(5) Before conducting the referendum provided for in subsection (1) of this section, the director may require the petitioners to deposit with him or her an amount of money as the director deems necessary to defray the expenses of conducting the referendum. The director shall provide the petitioners an estimate of expenses that may be incurred to conduct a referendum before any service takes place. Petitioners shall deposit funds with the director to pay for expenses incurred by the department. The commission shall reimburse petitioners the amount paid to the department when funds become available. However, if for any reason the referendum process is discontinued, the petitioners shall reimburse the department for expenses incurred by the department up until the time the process is discontinued.

(6) The director is not required to hold a referendum under subsection (1) of this section more than once in any twelve-month period. [2011 c 54 § 2; 2006 c 330 § 5.]

15.89.050 Appointment of members—Terms, travel expenses. (1) The director shall appoint the producer members of the commission. In making appointments, no later than ninety days before an expiration of a commission member's term, the director shall call for recommendations for commission member positions, and the director shall take into consideration recommendations made by a statewide Washington state craft brewing trade association or other producers. In appointing persons to the commission, the director shall seek a balanced representation on the commission that reflects the composition of the beer producers throughout the state on the basis of beer produced and geographic location. Information on beer production by geographic location shall be provided by the commission upon the director's request.

(2) If a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the commission shall notify the director and the unexpired term shall immediately be filled by appointment by the director.

(3) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2011 c 54 § 3; 2006 c 330 § 6.]

15.89.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity. Except as otherwise provided in this

chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members. The liability of the commission members shall be several and not joint, and no member is liable for the default of any other member. This provision confirms that commission members have been and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW. [2006 c 330 § 7.]

15.89.070 Commission powers and duties. The commission shall:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC

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314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to *chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(13) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2011 c 103 § 16; 2011 c 60 § 3; 2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

***Reviser's note:** Chapter 43.78 RCW was entirely repealed or recodified by 2011 1st sp.s. c 43 § 306.

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

15.89.073 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, promotion, and education programs related to beer; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing of beer may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning beer.

(3) The commission, before the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2006 c 330 § 9.]

15.89.075 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to the marketing and promotion of Washington produced beer. [2006 c 330 § 10.]

15.89.080 Research, promotional, and educational campaign. The commission may create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account this information in the discharge of its duties under this chapter. [2006 c 330 § 11.]

15.89.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign goals that serve the needs of producers. The goals may include efforts to:

(1) Establish Washington beer as a major factor in markets everywhere;

(2) Promote Washington breweries as tourist attractions;

(3) Encourage favorable reporting of Washington beer and breweries in the press throughout the world;

(4) Establish Washington beer in markets everywhere as a major source of premium beer;

(5) Encourage favorable legislative and regulatory treatment of Washington beer in markets everywhere;

(6) Encourage promotion of Washington agriculture related to beer production, specifically hops, malting barley, and wheat grown in the state; and

(7) Foster economic conditions favorable to investment in the production of Washington beer. [2006 c 330 § 12.]

15.89.100 List of producers of beer—Reporting system. (1) The commission shall prepare a list of all producers from information available from the liquor control board, the department, or the producers' association. This list must contain the names and addresses of producers within this state and the amount, by barrelage, of beer produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up-to-date in accordance with evidence and information available to the commission by December 31st of each year. For the purposes of giving notice and holding referendums, the list updated before the date for issuing notices or ballots is the list of all producers entitled to notice, to assent or dissent, or to vote. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter.

(2) It is the responsibility of producers to ensure that their correct address is filed with the commission. It is also the responsibility of producers to submit production data to the commission as prescribed by this chapter.

(3) The commission shall develop a reporting system to document that the producers in this state are reporting quantities of beer produced and are paying the assessment as provided in RCW 15.89.110. [2011 c 54 § 4; 2006 c 330 § 13.]

15.89.110 Annual assessment on beer production—Approval by referendum—Rules. (1) Pursuant to referendum in accordance with RCW 15.89.040, there is levied, and the commission shall collect, upon beer produced by a producer, an annual assessment of ten cents per barrel of beer produced, up to ten thousand barrels per location.

(2) The commission shall adopt rules prescribing the time, place, and method for payment and collection of this assessment and provide for the collection of assessments from producers who ship directly out-of-state.

(3) The commission may reduce the assessment per producer based upon in-kind contributions to the commission. [2011 c 54 § 5; 2006 c 330 § 14.]

15.89.120 Deposit of money. The commission shall deposit money collected under RCW 15.89.110 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. RCW 43.01.050 does not apply to this account or to the money received, collected, or expended as provided in this chapter. [2006 c 330 § 15.]

15.89.130 Assessment constitutes debt—Penalty for nonpayment—Civil action. An assessment levied in an amount determined by the commission under RCW 15.89.110 constitutes a personal debt of every person assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a producer fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails

to pay an assessment, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [2006 c 330 § 16.]

15.89.140 Certain records exempt from public disclosure—Exceptions. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2006 c 330 § 17.]

15.89.150 Costs—Funding staff support—Rules. (1) All costs incurred by the department, including the adoption of rules and other actions necessary to carry out this chapter, shall be reimbursed by the commission.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2006 c 330 § 18.]

15.89.160 Enforcement. County and state law enforcement officers, the liquor control board and its enforcement agents, and employees of the department shall enforce this chapter. [2006 c 330 § 19.]

15.89.170 Prosecution—Enforcement by superior courts. (1) Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(2) The superior courts may enforce this chapter and the rules and regulations of the commission issued hereunder, and may prevent and restrain violations thereof. [2006 c 330 § 20.]

15.89.900 Construction—2006 c 330. This act shall be liberally construed to effectuate its purposes. [2006 c 330 § 21.]

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15.89.901 Severability—2006 c 330. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 330 § 29.]

Chapter 15.92 RCW CENTER FOR SUSTAINING AGRICULTURE AND NATURAL RESOURCES

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15.92.005 Finding. The legislature finds that public concerns are increasing about the need for significant efforts to develop sustainable systems in agriculture. The sustainable systems would address many anxieties, including the erosion of agricultural lands, the protection and wise utilization of natural resources, and the safety of food production. Consumers have demonstrated their apprehension in the marketplace by refusing to purchase products whose safety is suspect and consumer confidence is essential for a viable agriculture in Washington. Examples of surface and ground water contamination by pesticides and chemical fertilizers raise concerns about deterioration of environmental quality. Reducing soil erosion would maintain water quality and protect the long-term viability of the soil for agricultural productivity. Both farmers and farm labor are apprehensive about the effects of pesticides on their health and personal safety. Development of sustainable farming systems would strengthen the economic viability of Washington's agricultural production industry.

Public anxieties over the use of chemicals in agriculture have resulted in congress amending the federal insecticide, fungicide and rodenticide act which requires all pesticides and their uses registered before November 1984 to be reregistered, complying with present standards, by the end of 1997. The legislature finds that the pesticide reregistration process and approval requirements could reduce the availability of chemical pesticides for use on minor crops in Washington and may jeopardize the farmers' ability to grow these crops in Washington.

The legislature recognizes that Washington State University supports research and extension programs that can lead to reductions in pesticide use where viable alternatives are both environmentally and economically sound. Yet, the legislature finds that a focused and coordinated program is

needed to develop possible alternatives, increase public confidence in the safety of the food system, and educate farmers and natural resource managers on land stewardship.

The legislature further finds that growers, processors, and agribusiness depend upon pesticide laboratories associated with manufacturers, regional universities, state departments of agriculture, and the United States department of agriculture to provide residue data for registering essential pesticides. The registration of uses for minor crops, which include vegetables, fruits, nuts, berries, nursery and greenhouse crops, and reregistration of needed chemicals, are activities of particular concern to ensure crop production. Furthermore, public demands for improved information and education on pesticides and risk assessment efforts justify these efforts.

The legislature further finds that multiple alternatives are needed for pest control, including programs for integrated pest management, genetic resistance to pests, biological control, cultural practices, and the use of appropriate approved chemicals. [1991 c 341 § 1.]

15.92.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including but not limited to, products qualifying as organic products under chapter 15.86 RCW, private sector cultured aquatic products as defined in RCW 15.85.020, bees and honey, and Christmas trees but not including timber or timber products.

(2) "Center" means the center for sustaining agriculture and natural resources established at Washington State University.

(3) "Integrated pest management" is a strategy that uses various combinations of pest control methods, biological, cultural, and chemical, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(4) "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

(5) "Laboratory" means the food and environmental quality laboratory established at Washington State University at Tri-Cities.

(6) "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.

(7) "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides including, but not limited to, a use for a special local need.

(8) "Natural resources" means soil, water, air, forests, wetlands, wildlands, and wildlife.

(9) "Pesticide" means chemical or biologic used to control pests such as insect, rodent, nematode, snail, slug, weed, virus, or any organism the director of agriculture may declare to be a pest.

(10) "Registration" means use of a pesticide approved by the state department of agriculture.

(11) "Sustainable agriculture" means a systems approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life. [2011 c 103 § 32; 1995 c 390 § 4; 1991 c 341 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

15.92.020 Center established. A center for sustaining agriculture and natural resources is established at Washington State University. The center shall provide statewide leadership in research, extension, and resident instruction programs to sustain agriculture and natural resources. [1991 c 341 § 3.]

15.92.030 Primary activities—Cooperative with University of Washington. The center is to work cooperatively with the University of Washington to maximize the use of financial resources in addressing forestry issues. The center's primary activities include but are not limited to:

(1) Research programs which focus on developing possible alternative production and marketing systems through:

- (a) Integrated pest management;
- (b) Biological pest control;
- (c) Plant and animal breeding;
- (d) Conservation strategies; and
- (e) Understanding the ecological basis of nutrient management;

(2) Extension programs which focus on:

- (a) On-farm demonstrations and evaluation of alternative production practices;
- (b) Information dissemination, and education concerning sustainable agriculture and natural resource systems; and
- (c) Communication and training on sustainable agriculture strategies for consumers, producers, and farm and conservation-related organizations;

(3) On-farm testing and research to calculate and demonstrate costs and benefits, including economic and environmental benefits and trade-offs, inherent in farming systems and technologies;

(4) Crop rotation and other natural resource processes such as pest-predator interaction to mitigate weed, disease, and insect problems, thereby reducing soil erosion and environmental impacts;

(5) Management systems to improve nutrient uptake, health, and resistance to diseases and pests by incorporating the genetic and biological potential of plants and animals into production practices;

(6) Soil management, including conservation tillage and other practices to minimize soil loss and maintain soil productivity; and

(7) Animal production systems emphasizing preventive disease practices and mitigation of environmental pollution. [1991 c 341 § 4.]

15.92.040 Administrator. The center is managed by an administrator. The administrator shall hold a joint appointment as an assistant director in the Washington State University agricultural research center and cooperative extension.

(1) A committee shall advise the administrator. The dean of the Washington State University college of agriculture and home economics shall make appointments to the advisory committee so the committee is representative of affected groups, such as the Washington department of social and health services, the Washington department of ecology, the Washington department of agriculture, the chemical and fertilizer industry, food processors, marketing groups, consumer groups, environmental groups, farm labor, and natural resource and agricultural organizations.

(2) Each appointed member shall serve a term of three years, and one-third are appointed every year. The entire committee is appointed the first year: One-third for a term of one year, one-third for a term of two years, and one-third for a term of three years. A member shall continue to serve until a successor is appointed. Vacancies are filled by appointment for the unexpired term. The members of the advisory committee shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the committee as provided in RCW 43.03.050 and 43.03.060.

(3) It is the responsibility of the administrator, in consultation with the advisory committee, to:

(a) Recommend research and extension priorities for the center;

(b) Conduct a competitive grants process to solicit, review, and prioritize research and extension proposals; and

(c) Advise Washington State University on the progress of the development and implementation of research, teaching, and extension programs that sustain agriculture and natural resources of Washington. [1991 c 341 § 5.]

15.92.050 Food and environmental quality laboratory. A food and environmental quality laboratory operated by Washington State University is established in the Tri-Cities area to conduct pesticide residue studies concerning fresh and processed foods, in the environment, and for human and animal safety. The laboratory shall cooperate with public and private laboratories in Washington, Idaho, and Oregon. [1991 c 341 § 6.]

15.92.060 Laboratory responsibilities. The responsibilities of the laboratory shall include:

(1) Evaluating regional requirements for minor crop registration through the federal IR-4 program;

(2) Providing a program for tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses in this state;

(3) Conducting studies on the fate of pesticides on crops and in the environment, including soil, air, and water;

(4) Improving pesticide information and education programs;

(5) Assisting federal and state agencies with questions regarding registration of pesticides which are deemed critical to crop production, consistent with priorities established in RCW 15.92.070; and

(6) Assisting in the registration of biopesticides, pheromones, and other alternative chemical and biological methods. [1995 c 390 § 5; 1991 c 341 § 7.]

15.92.070 Board to advise laboratory. The laboratory is advised by a board appointed by the dean of the Washington State University college of agriculture and home economics. The dean shall cooperate with appropriate officials in Washington, Idaho, and Oregon in selecting board members.

(1) The board shall consist of one representative from each of the following interests: A human toxicologist or a health professional knowledgeable in worker exposure to pesticides, the Washington State University vice-provost for research or research administrator, representatives from the state department of agriculture, the department of ecology, the department of health, the department of labor and industries, privately owned Washington pesticide analytical laboratories, federal regional pesticide laboratories, an Idaho and Oregon laboratory, whether state, university, or private, a chemical and fertilizer industry representative, farm organizations, food processors, marketers, farm labor, environmental organizations, and consumers. Each board member shall serve a three-year term. The members of the board shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the board as provided in RCW 43.03.050 and 43.03.060.

(2) The board is in liaison with the pesticide incident reporting and tracking panel and shall review the chemicals investigated by the laboratory according to the following criteria:

(a) Chemical uses for which a database exists on environmental fate and acute toxicology, and that appear safer environmentally than pesticides available on the market;

(b) Chemical uses not currently under evaluation by public laboratories in Idaho or Oregon for use on Washington crops;

(c) Chemicals that have lost or may lose their registration and that no reasonably viable alternatives for Washington crops are known; and

(d) Other chemicals vital to Washington agriculture.

(3) The laboratory shall conduct research activities using approved good laboratory practices, namely procedures and recordkeeping required of the national IR-4 minor use pesticide registration program.

(4) The laboratory shall coordinate activities with the national IR-4 program. [2010 1st sp.s. c 7 § 133; 1991 c 341 § 8.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

15.92.080 Annual report—Acceptable risk of human and environmental exposure. The center for sustaining agriculture and natural resources at Washington State University shall prepare and present an annual report to the appropriate legislative committees. The report shall include the center's priorities to find alternatives to the use of agricultural chemicals that pose human and environmental risks. The first report, due no later than November 1, 1992, shall use federal criteria of acceptable risk of human and environmental exposure for establishing such priorities and for conducting responsive research and education programs. For

each subsequent year, the report shall detail the center's progress toward meeting the goals identified in the center's plan. [1991 c 341 § 9.]

15.92.090 Commission on pesticide registration—Established—Composition—Duration of membership—Compensation. (1) A commission on pesticide registration is established. The commission shall be composed of twelve voting members appointed by the director as follows:

(a) Eight members from the following segments of the state's agricultural industry as nominated by a statewide private agricultural association or agricultural commodity commission formed under Title 15 RCW: (i) The tree fruit industry; (ii) hop growers; (iii) potato growers; (iv) wheat growers; (v) vegetable and seed growers; (vi) berry growers; (vii) wine grape growers; and (viii) the nursery and landscape industry. Although members are appointed from various segments of the agriculture industry, they are appointed to represent and advance the interests of the industry as a whole.

(b) One member from each of the following: (i) Forest protection industry; (ii) food processors; (iii) agricultural chemical industry; and (iv) professional pesticide applicators. One member shall be appointed for each such segment of the industry and shall be nominated by a statewide, private association of that segment of the industry. The representative of the agricultural chemical industry shall be involved in the manufacture of agricultural crop protection products.

The following shall be ex officio, nonvoting members of the commission: The coordinator of the interregional project number four at Washington State University; the director of the department of ecology or the director's designee; the director of the department of agriculture or the director's designee; the director of the department of labor and industries or the director's designee; and the secretary of the department of health or the secretary's designee.

(2) Each voting member of the commission shall serve a term of three years. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the director during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission serve without compensation from the state other than such travel expenses.

(3) The commission shall elect a chair from among its voting members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the quorum. [2011 1st sp.s. c 21 § 24; 1999 c 247 § 1; 1995 c 390 § 1.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

15.92.095 Commission on pesticide registration—State appropriations—Restrictions on use of state

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money—Commission approval required. (1) This subsection applies to the use of state appropriations made to or legislatively intended for the commission on pesticide registration and to any other moneys appropriated by the state and received by the commission on pesticide registration:

(a) The moneys may not be expended without the express approval of the commission on pesticide registration;

(b) The moneys may be used for: (i) Evaluations, studies, or investigations approved by the commission on pesticide registration regarding the registration or reregistration of pesticides for minor crops or minor uses or regarding the availability of pesticides for emergency uses. These evaluations, studies, or investigations may be conducted by the food and environmental quality laboratory or may be secured by the commission from other qualified laboratories, researchers, or contractors by contract, which contracts may include, but are not limited to, those purchasing the use of proprietary information; (ii) evaluations, studies, or investigations approved by the commission regarding research, implementation, and demonstration of any aspect of integrated pest management and pesticide resistance management programs; (iii) the tracking system described in RCW 15.92.060; and (iv) the support of the commission on pesticide registration and its activities; and

(c) Not less than twenty-five percent of such moneys shall be dedicated to studies or investigations concerning the registration or use of pesticides for crops that are not among the top twenty agricultural commodities in production value produced in the state, as determined annually by the Washington agricultural statistics service.

(2) The commission on pesticide registration shall establish priorities to guide it in approving the use of moneys for evaluations, studies, and investigations under this section. Each biennium, the commission shall prepare a contingency plan for providing funding for laboratory studies or investigations that are necessary to pesticide registrations or related processes that will address emergency conditions for agricultural crops that are not generally predicted at the beginning of the biennium. [1999 c 247 § 2; 1995 c 390 § 2.]

15.92.100 Commission on pesticide registration—Duties. The commission on pesticide registration shall:

(1) Provide guidance to the food and environmental quality laboratory established in RCW 15.92.050 regarding the laboratory's studies, investigations, and evaluations concerning the registration of pesticides for use in this state for minor crops and minor uses and concerning the availability of pesticides for emergency uses;

(2) Encourage agricultural organizations to assist in providing funding, in-kind services, or materials for laboratory studies and investigations concerning the registration of pesticides and research, implementation, and demonstration of any aspect of integrated pest management and pesticide resistance management programs for minor crops and minor uses that would benefit the organizations;

(3) Provide guidance to the laboratory regarding a program for: Tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses; providing this information to organizations of agricultural producers; and maintaining close contact between the laboratory, the department of agriculture, and organizations of agricultural produc-

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ers regarding the need for research to support the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses;

(4) Ensure that the activities of the commission and the laboratory are coordinated with the activities of other laboratories in the Pacific Northwest, the United States department of agriculture, and the United States environmental protection agency to maximize the effectiveness of regional efforts to assist in the registration of pesticides for minor crops and minor uses and in providing for the availability of pesticides for emergency uses for the region and the state; and

(5) Ensure that prior to approving any residue study that there is written confirmation of registrant support and willingness or ability to add the given minor crop to its label including any restrictions or guidelines the registrant intends to impose. [1999 c 247 § 3; 1995 c 390 § 3.]

15.92.105 Commission on pesticide registration—Report on activities—Review by legislature. By December 15, 2002, the commission shall file with the legislature a report on the activities supported by the commission for the period beginning on July 23, 1995, and ending on December 1, 2002. The report shall include an identification of: The priorities that have been set by the commission; the state appropriations made to Washington State University that have been within the jurisdiction of the commission; the evaluations, studies, and investigations funded in whole or in part by such moneys and the registrations and uses of pesticides made possible in large part by those evaluations, studies, and investigations; the matching moneys, in-kind services, and materials provided by agricultural organizations for those evaluations, studies, and investigations; and the program or programs for tracking pesticide availability provided by the laboratory under the guidance of the commission and the means used for providing this information to organizations of agricultural producers.

During the regular session of the legislature in the year 2003, the appropriate committees of the house of representatives and senate shall evaluate the effectiveness of the commission in fulfilling its statutory responsibilities. [1995 c 390 § 6.]

15.92.110 Commission on pesticide registration—Receipt of gifts, grants, and endowments. The commission on pesticide registration, and Washington State University on behalf of the commission, may receive such gifts, grants, and endowments from public or private sources as may be used from time to time, in trust or otherwise, for the use and benefit of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1995 c 390 § 7.]

Chapter 15.100 RCW FOREST PRODUCTS COMMISSION

Sections

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15.100.010 Finding. The legislature finds that the creation of a forest products commission would assist in expanding the state's economy, because:

(1) Marketing is a dynamic and changing part of the Washington forest products industry and a vital element in expanding the state economy;

(2) The sale in the state and export to other states and abroad of forest products made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and are key components of the health of many local communities because many secondary businesses are largely dependent on the health of the forest products industry; and

(3) Forest products are made from a renewable resource and are more environmentally sound than many alternative products. [2001 c 314 § 1.]

15.100.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the forest products commission.

(2) "Department" means the department of agriculture.

(3) "Director" means the director of the department of agriculture or the director's authorized representative.

(4) "Forest products" or "timber" means trees of any species maintained for eventual harvest whether planted or of natural growth, standing or down, on privately or publicly owned land, and also includes wood products related thereto, but does not include Christmas trees or other trees on which the timber excise tax provided under chapter 84.33 RCW is not imposed.

(5) "Person" includes any individual, corporation, firm, partnership, trust, association, or any other organization of individuals.

(6) "Producer" means any person who harvests timber in Washington state and pays the timber excise tax imposed under chapter 84.33 RCW on at least two million board feet in a calendar year or in four consecutive calendar quarters.

(7) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.

(8) "Western Washington" means that portion of the state lying west of the Cascade mountain range. [2001 c 314 § 2.]

15.100.030 Washington forest products commission—Created—Membership—Quorum—Terms. (1)(a) There is created a commodity commission to be known and designated as the Washington forest products commission. The commission is composed of nine voting members. The commission may, in its sole discretion, add or remove non-voting ex officio members to the commission. Of the members, six shall be from western Washington, and three shall be from eastern Washington. After the initial election of commission members, however, if a position cannot be filled by a member from eastern Washington within sixty days from the date on which nominations may first be received because of a lack of candidates, the position may be filled by a member from western Washington. Under no circumstances will there be less than two board members from eastern Washington. If a position was filled by a member from western Washington because of a lack of candidates from eastern Washington, and districts are not used for the nomination and election of members, then a person from eastern Washington must fill the next available vacancy or open position at the next election to bring the number of representatives from eastern Washington up to three members. All members shall be elected by the entire group of producers unless the commission creates districts for the members as authorized in RCW 15.100.050. If districts are used for the nomination and election of commission members, and it does not appear that one of the positions from eastern Washington will be filled because of a lack of candidates, then a commission member who resides in western Washington must be elected by the entire group of producers as an at-large member. The position of the western Washington member who is elected as an at-large member shall be filled by a member from eastern Washington at the expiration of the term of the at-large member. If districts are not used for the nomination and election of members, the commission shall strive to achieve representation on the commission from the different geographic regions of the state.

(b) Of the six members from western Washington, three members must have annual harvests of more than seventy-five million board feet, and three members must have annual harvests between two million board feet and seventy-five million board feet.

(c) Of the two members from eastern Washington, one member must have an annual harvest greater than forty million board feet, and one member must have an annual harvest between two million board feet and forty million board feet. If there is a third member from eastern Washington, the only harvest requirement is that the member have an annual harvest of at least two million board feet.

(2) The members must be citizens and residents of this state, and over the age of twenty-one years. Each member must currently, and for the five years last preceding his or her election, be actually engaged in producing forest products within the state of Washington, either individually or as an officer of a corporation, firm, partnership, trust, association, or business organization at the level of production required to qualify as a producer. Each member must also derive a substantial amount of his or her income from the production of forest products. The qualifications set forth in this section apply throughout each member's term of office.

(3) No more than one member of the commission may be employed by, or connected in a proprietary capacity with, the

same corporation, firm, partnership, trust, association, or business organization.

(4) Five voting members of the commission constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

(5) The regular term of office of the members is four years from November 1st following their election and until their successors are elected and qualified. However, the first terms of the members elected in the initial November 1st election is as follows: Positions one, four, and seven terminate on November 1st, two years after the initial election is held; positions two, five, and eight terminate on November 1st, three years after the initial election is held; and positions three, six, and nine terminate on November 1st, four years after the initial election is held. [2002 c 251 § 2; 2001 c 314 § 3.]

15.100.040 Initial meeting—Nominations for initial election of members—Subsequent efforts when approval not given. (1) The director shall call the initial meeting of producers of forest products for the purpose of nominating their respective members of the commission after receiving notice from an association representing producers of forest products that substantial interest exists in forming a forest products commission. Public notice of the meeting shall be given by the director in the manner the director determines is appropriate. A producer may on his or her own motion file his or her name with the director for the purpose of receiving notice of the meeting. The nonreceipt of the notice by any interested person does not invalidate the proceedings.

(2) Prior to the nomination of commission members, the department of revenue shall provide the director with a list of all qualified producers within the state based upon tax records of the department.

(3) For the initial election of commission members, any qualified producer may be nominated orally for a commissioner position at the meeting convened by the director. Nominations may also be made within five days prior to the meeting by a written petition filed with the department, signed by at least five producers who reside in the state. If the director determines that one of the positions from eastern Washington will go unfilled because of a lack of candidates, the director shall announce that this position shall be filled by a member from western Washington. If the position designated for eastern Washington is filled by a member from western Washington because of a lack of candidates from eastern Washington, this position shall be designated as position number seven by the director for purposes of RCW 15.100.030(5). Under no circumstances will there be less than two board members from eastern Washington.

(4) The initial members of the commission shall be elected by secret mail ballot under the supervision of the director at the same time the referendum is submitted under RCW 15.100.120 calling for the creation of the commission and the imposition of the initial assessment. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(5) If the director determines under RCW 15.100.120(3) that the requisite approval for the establishment of a commis-

sion has not been given, any subsequent efforts to create a commission must follow the procedures established under this chapter for the initial nomination and election of members. [2002 c 251 § 3; 2001 c 314 § 4.]

15.100.043 Costs of proceeding to form a commission—Reimbursement. The association responsible for giving the director notice under RCW 15.100.040 that substantial interest exists in forming a forest products commission shall reimburse the department for its costs associated with conducting a proceeding to initiate a commission under RCW 15.100.040 and 15.100.120. If the necessary approval is received for the creation of a commission, the commission shall reimburse the association for the costs paid to the department when funds become available. [2002 c 251 § 4.]

15.100.050 After initial election of members—Rules—Annual meetings—Public notice. (1) After the initial election of commission members, the commission shall establish rules for electing commission members, including the method used for notification, nominating, and voting. The commission may create commission districts and boundaries, and may also establish a weighted voting procedure for election of commission members. The commission shall hold its annual meeting during the month of October each year for the purpose of nominating commission members and the transaction of other business. Public notice of the meeting shall be given by the commission in the manner it determines is appropriate. A producer may on his or her own motion file his or her name with the commission for the purpose of receiving notice of the meeting. The nonreceipt of the notice by any interested person does not invalidate the proceedings.

(2) Prior to the nomination of commission members, the department of revenue shall provide the commission with a list of all qualified producers within the state based upon tax records of the department. [2001 c 314 § 5.]

15.100.060 Vacancies—Compensation. (1) In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, the position until the next annual meeting shall be filled by vote of the remaining members of the commission. At the annual meeting a commissioner shall be elected to fill the balance of the unexpired term.

(2) Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when on official commission business. [2001 c 314 § 6.]

15.100.070 Obligations of commission—Limitations on liabilities or claims—State—Individual capacity. Obligations incurred by the commission and liabilities or claims against the commission may be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission,

including employees of the commission, may not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. A person or employee may not be held responsible individually for any act or omission of any other members of the commission. [2001 c 314 § 7.]

15.100.080 Powers and duties of commission. The powers and duties of the commission include:

(1) To elect a chair and such officers as the commission deems advisable. The commission shall adopt rules for its own governance, which provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To adopt any rules necessary to carry out the purposes of this chapter, in conformance with chapter 34.05 RCW;

(3) To administer and do all things reasonably necessary to carry out the purposes of this chapter;

(4) At the pleasure of the commission, to employ a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission;

(5) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(6) To engage directly or indirectly in the promotion of Washington forest products and managed forests, and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of forest products, or of research related to such marketing, advertising, or sale of forest products, or of research related to managed forests;

(7) To enforce the provisions of this chapter, including investigating and prosecuting violations of this chapter;

(8) To acquire and transfer personal and real property, establish offices, incur expense, and enter into contracts. Contracts for creation and printing of promotional literature are not subject to *chapter 43.78 RCW, but such contracts may be canceled by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(9) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(10) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(11) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(12) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission, or other entity for the purpose of promoting the general welfare of the forest products industry and particularly for the purpose of assisting in the sale and distribution of Washington forest products in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington forest products in domestic or foreign commerce, and employing and paying for vendors of professional services of all kinds;

(13) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(14) To propose assessment levels for producers subject to referendum approval under RCW 15.100.110; and

(15) To participate in federal and state agency hearings, meetings, and other proceedings relating to the regulation, production, manufacture, distribution, sale, or use of forest products. [2010 c 8 § 6115; 2001 c 314 § 8.]

***Reviser's note:** Chapter 43.78 RCW was entirely repealed or recodified by 2011 1st sp.s. c 43 § 306.

15.100.090 Research, promotional, and educational campaigns. The commission shall create, provide for, and conduct a research, promotional, and educational campaign as sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account the information obtained in the discharge of its duties under this chapter. [2001 c 314 § 9.]

15.100.100 List of all Washington producers—Confidential—Reporting system for assessment purposes. (1) The commission shall cause a list to be prepared of all Washington producers of forest products from any information available from the commission, producers' association, or producers, including tax records from the department of revenue. This list shall contain the names and addresses of all persons who produce forest products within this state, the amount of forest products produced during the period designated by the commission, and the assessment amount for each member. The list is considered confidential and may be reviewed only by the employees of the commission, except for information that may be disclosed to the public and commission members under subsection (4) of this section. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up to date in accordance with evidence and information available to the commission on or before December 31st of each year, or as soon thereafter as possible. For all purposes of giving notice and holding referendums, the list on hand, corrected up to the day next preceding the date for issuing notices or ballots as the case may be, is, for purposes of this

chapter, the list of all producers entitled to notice or to assent or dissent or to vote.

(2) The commission shall develop a reporting system to document that the producers of forest products in this state are reporting quantities of forest products produced and subject to the assessment as provided in RCW 15.100.110.

(3) The department of revenue may charge the commission for the reasonable costs of providing reports of harvest activity on a quarterly basis.

(4) Any taxpayer information received by the commission from the department of revenue may only be used for the limited purposes of establishing lists of producers necessary to determine eligibility for voting, eligibility for serving as a commission member, the amount of assessments owed, or other necessary purposes as established by law. Any return or tax information received from the department of revenue may be reviewed only by the employees of the commission. Employees may disclose to the public and commission members a list of commission members, groupings of at least three commission members by the amount of forest products harvested over any time period designated by the commission of at least one quarter, and the members who are eligible for the various positions on the commission. [2001 c 314 § 10.]

15.100.110 Assessment for permanent funding of commission—Adjustments—Referendum. (1) To provide for permanent funding of the forest products commission, an assessment shall be levied by the commission on producers of each species of forest products. The initial rate of assessment that shall be submitted for approval by referendum pursuant to RCW 15.100.120 is fifty-seven cents per thousand board feet. The initial assessment is not effective until approved by a majority of producers as required by RCW 15.100.120.

(2) After the initial assessment rate is approved, the commission may adjust the amount of the assessment within a range of forty-five cents up to ninety cents per thousand board feet. The commission shall submit any proposed increase in the assessment to producers pursuant to the referendum process established in this section, and shall supply all known producers with a ballot for the referendum. The commission shall establish the assessment for the marketing year by January 1st of each year, or as soon thereafter as possible. Assessments may only be used for the purposes and objects of this chapter.

(3) The forest products commission may raise the assessment on forest products in excess of the fiscal growth factor under chapter 43.135 RCW. The assessment limits established by this section are solely to provide prior legislative authority for the purposes of RCW 43.135.055 and are not a limit on the authority of the forest products commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under this section must be made with the procedural requirements established by this chapter for altering such assessments.

(4) The requirement for approval of an assessment is met if: (a) At least fifty-one percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least sixty-one percent of the volume of the producers replying in the referendum; or (b) sixty-five

percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least fifty-one percent of the volume of the producers replying in the referendum. An assessment shall only be approved if at least forty percent of the eligible producers participate in the vote. [2001 c 314 § 11.]

15.100.120 Establishment of commission and initial assessment—Statewide referendum among producers.

(1) For purposes of determining producer participation in the commission, the initial election of commissioners, and for imposition of the original assessment specified in RCW 15.100.110, the director shall conduct a referendum among all producers of forest products within the state.

(2) The requirement for approval of the assessment and creation of the commission is met if: (a) At least fifty-one percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least sixty-one percent of the volume of the producers replying in the referendum; or (b) sixty-five percent by numbers of producers replying in the referendum vote affirmatively, and these producers represent at least fifty-one percent of the volume of the producers replying in the referendum. The referendum shall only be approved if at least forty percent of the eligible producers participate in the vote.

(3) If the director determines that the requisite approval has been given, the director shall declare the establishment of the commission and direct it to put into force the assessment authorized in RCW 15.100.110. If the director finds that the requisite approval has not been given, then this chapter is not operative. [2001 c 314 § 12.]

15.100.130 Deposit of moneys collected—Appropriation not required. The commission shall deposit moneys collected under RCW 15.100.110 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. RCW 43.01.050 does not apply to this account or to the moneys received, collected, or expended under this chapter. [2001 c 314 § 13.]

15.100.140 Assessment—Personal debt—Payable when called—Failure to pay—Civil action. A due and payable assessment levied in the amount determined by the commission under RCW 15.100.110 constitutes a personal debt of every person so assessed, or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a person fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay any due and payable assessment or other such sum, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [2001 c 314 § 14.]

(2012 Ed.)

15.100.150 Enforcement of chapter. All county and state law enforcement officers shall assist in the enforcement of this chapter. [2001 c 314 § 15.]

15.100.160 Superior courts—Jurisdiction. The superior courts are hereby vested with jurisdiction to enforce this chapter and the rules of the commission, and to prevent and restrain violations thereof. [2001 c 314 § 16.]

15.100.900 Construction. This chapter shall be liberally construed to effectuate its purposes. [2001 c 314 § 17.]

15.100.901 Severability—2001 c 314. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 314 § 22.]

Chapter 15.105 RCW

FROM THE HEART OF WASHINGTON PROGRAM

Sections

15.105.005	Findings.
15.105.010	Definitions.
15.105.020	Establishing a private, nonprofit corporation—Duties of successor organization—Debts and other liabilities.
15.105.030	Actions by department to establish a successor organization.
15.105.040	Board of directors of the successor organization—State membership.
15.105.050	Program logo.
15.105.060	Gifts, grants, or endowments.
15.105.900	Severability—2004 c 26.
15.105.901	Effective date—2004 c 26.

15.105.005 Findings. The legislature finds that the support of Washington's agriculture industry and its family farms by the citizens of the state of Washington is beneficial to the economy of the state. The legislature also finds that Washington farmers produce a variety of wholesome, quality products and are good stewards of the land.

The legislature also finds that the from the heart of Washington program, developed by the Washington state department of agriculture with one-time federal grant moneys, is a valuable tool to convey important messages about Washington agriculture and to encourage Washington citizens to buy Washington-grown and Washington-processed food and agricultural products. With the exhaustion of the one-time federal grant funding, the legislature finds that the program would benefit from a new governance structure that will allow the necessary operational flexibility to enable the program to expand and to encourage private investment in the program, and that the continuance of the program as a private, nonprofit corporation is the best method to achieve these goals.

The legislature further finds that the continuation of the from the heart of Washington program will provide both direct and indirect economic benefits to the people of the state of Washington. [2004 c 26 § 1.]

15.105.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "From the heart of Washington" or "program" means that program created by the department to encourage Wash-

ington citizens to purchase Washington food and agricultural products and to promote the value of agriculture and family farms to Washington state.

(2) "Successor organization" means a private, nonprofit corporation created specifically to assume responsibility for carrying out the from the heart of Washington program that is now part of the department. The private, nonprofit corporation must qualify as a tax-exempt, nonprofit corporation under section 501(c) of the federal internal revenue code; the majority of members on its board of directors must be from Washington commodity commissions, nonprofit associations organized for the promotion of Washington agricultural products, and other agricultural industry groups; and the corporation must carry forward with the work of the current program.

(3) "Department" means the Washington state department of agriculture.

(4) "Director" means the director of the Washington state department of agriculture.

(5) "Fiscal agent" means the Washington state fruit commission, as a contractor of the department. [2004 c 26 § 2.]

15.105.020 Establishing a private, nonprofit corporation—Duties of successor organization—Debts and other liabilities. (1) The department may cooperate with other agencies, boards, commissions, and associations in the state of Washington to establish a private, nonprofit corporation for the purpose of carrying out the program. The nonprofit corporation must be organized under chapter 24.03 RCW and has the powers granted under that chapter. However, this chapter does not prohibit the department or other agencies, boards, commissions, and associations from separately continuing to promote Washington products under their existing authorities.

(2) The department may contract with the successor organization to carry out the program. The contract must require the successor organization to aggressively seek to fund its continued operation from nonstate funding sources.

(3) The successor organization must report to the department each January 1st on the amounts it has secured from both nonstate and state funding sources, its operations, and its programs.

(4) Debts and other liabilities of the successor organization are successor organization debts and liabilities only and may be satisfied only from the resources of the successor organization. The state of Washington is not liable for the debts or liabilities of the successor organization. [2004 c 26 § 3.]

15.105.030 Actions by department to establish a successor organization. In order to accomplish the establishment of a successor organization, the department and its fiscal agent may take all necessary and proper steps, including:

(1) Transferring any equipment, software, database, other assets except the logo of the program, or contracts for services to the successor organization under appropriate terms and conditions, including reasonable compensation deemed appropriate by the department. The department shall retain the right to repossess any property transferred to the successor organization in the event that the successor organization dissolves, becomes bankrupt, insolvent, or is otherwise unable to carry out the program, or if the successor orga-

nization fails to comply with any contract with the department. In the event that the department exercises its right to repossess under this section, any property returned to the department becomes the property of the state and is administered by the department;

(2) Unless otherwise provided by agreement, assigning any contracts and other duties and responsibilities to the successor organization related to the program; and

(3) Providing necessary support services to the successor organization under contract for up to a two-year period after the effective date of a contract between a successor organization and the department for the delivery of program services. The successor organization shall provide full reimbursement for all costs of services contracted for under this subsection. [2004 c 26 § 4.]

15.105.040 Board of directors of the successor organization—State membership. (1) The department shall designate one or more persons to serve in the capacity of a member of the board of directors of the successor organization. The state is not liable under any circumstances for the acts of the successor organization, any member of its board of directors, or its employees.

(2) The department may pay an annual membership fee to the successor organization not to exceed the value of services received. [2004 c 26 § 5.]

15.105.050 Program logo. The logo of the program is the property of the department. The department may license the use of the logo to the successor organization and others, as it deems appropriate. The department retains the right to cancel any license to use the logo. [2004 c 26 § 6.]

15.105.060 Gifts, grants, or endowments. The department may receive gifts, grants, or endowments from private or public sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program. The department may spend or contract with the successor organization to spend the gifts, grants, or endowments or income from the private or public sources according to their terms. [2004 c 26 § 7.]

15.105.900 Severability—2004 c 26. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 26 § 8.]

15.105.901 Effective date—2004 c 26. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 19, 2004]. [2004 c 26 § 10.]

Chapter 15.115 RCW WASHINGTON GRAIN COMMISSION

Sections

- 15.115.010 Legislative declaration.
- 15.115.020 Regulations and restraints applicable to the wheat and barley industries.
- 15.115.030 Definitions.

- 15.115.040 Washington grain commission—Created—Members—Term of office.
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- 15.115.310 Penalties—Injunctions—Referring a violation to the county prosecutor—Jurisdiction.
- 15.115.900 Severability—2009 c 33.

15.115.010 Legislative declaration. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of wheat and barley produced in Washington is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that wheat and barley produced in Washington are properly promoted by:

(a) Enabling wheat producers and barley producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the grains they produce; and

(b) Working towards stabilizing the agricultural industries by increasing consumption of wheat and barley within the state, the nation, and internationally;

(2) That the wheat and barley industries operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and that includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wheat and barley industries be clearly expressed, that adequate protection be given to the industries and their activ-

ities and operations, and that wheat and barley be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's wheat and barley;

(b) Increase the sale and use of Washington state's wheat and barley in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's wheat and barley;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's wheat and barley and wheat and barley products;

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of wheat and barley produced in Washington state;

(4) That the commission is established primarily for the benefit of the people of the state of Washington and its economy. By enacting this chapter, the legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to wheat and barley production in Washington and issues related to the wheat and barley industry in Washington; and

(5) That this chapter is enacted in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state. [2009 c 33 § 1.]

15.115.020 Regulations and restraints applicable to the wheat and barley industries. The wheat and barley industries are highly regulated industries, and this chapter and the rules adopted under it are only one aspect of the regulation of those industries. Other regulations and restraints applicable to the wheat and barley industries include:

(1) Chapter 15.04 RCW, Washington agriculture general provisions;

(2) Chapter 15.08 RCW, horticultural pests and diseases;

(3) Chapter 15.14 RCW, planting stock;

(4) Chapter 15.49 RCW, seeds;

(5) Chapter 15.54 RCW, fertilizers, minerals, and limes;

(6) Chapter 15.58 RCW, Washington pesticide control act;

(7) Chapter 15.64 RCW, farm marketing;

(8) Chapter 15.83 RCW, agricultural marketing and fair practices;

(9) Chapter 15.86 RCW, organic products;

(10) Chapter 15.92 RCW, center for sustaining agriculture and natural resources;

(11) Chapter 17.24 RCW, insect pests and plant diseases;

(12) Chapter 19.94 RCW, weights and measures;

(13) Chapter 20.01 RCW, agricultural products—commission merchants, dealers, brokers, buyers, agents;

(14) Chapter 22.09 RCW, agricultural commodities;

(15) Chapter 43.23 RCW, department of agriculture;

(16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons including provisions of Title 21 U.S.C. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(17) Chapter 70.94 RCW, Washington clean air act, agricultural burning;

(18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and rodenticide act; and

(19) 7 U.S.C., Sec. 1621, agricultural marketing act. [2011 c 103 § 33; 2009 c 33 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.115.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affected area" means the following counties located in the state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

(2) "Affected producer" means any producer who is subject to this chapter.

(3) "Assessment" means the monetary amount established by the commission in accordance with this chapter.

(4) "Commercial channels" means the sale of wheat or barley for use as food, feed, seed, or any industrial or chemical use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(5) "Commercial quantities" means five hundred or more bushels of wheat or twenty tons of barley produced for market in any calendar year by any producer.

(6) "Commission" means the Washington grain commission.

(7) "Department" means the department of agriculture of the state of Washington.

(8) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act concerning some matter under this chapter.

(9) "Grain" or "grains" means wheat and barley and includes all kinds and varieties of wheat and barley grown in the state of Washington.

(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of wheat or barley that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(11) "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

(12) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(13) "Marketing year" means the twelve-month period beginning June 1st of any year and ending on May 31st of the subsequent year. "Fiscal year" means the twelve-month period beginning July 1st of any year and ending on June 30th of the subsequent year.

(14) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(15) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local or state government.

(16) "Producer" means any person who is engaged in the business of producing or causing to be produced for market, in commercial quantities, wheat or barley grown in the designated affected area of the state of Washington, and who has been so engaged in at least one of the past three years. "Producer" includes a person who contracts to produce or grow wheat or barley on behalf of a person who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase. "To produce" means to act as a producer.

(17) "Promotional hosting" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of wheat or barley or processed wheat or barley products.

(18) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(19) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(20) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position. [2009 c 33 § 3.]

15.115.040 Washington grain commission—Created—Members—Term of office. (1) There is hereby created the Washington grain commission. The commission is composed of five wheat producer members, two barley producer members, two members representing the wheat industry, one member representing the barley industry, and the director or his or her appointee. All members, including the director or his or her appointee, are full voting members of the commission.

(2)(a) Each wheat producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of wheat in the district in and for which he or she is nominated and appointed. A wheat producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of wheat producer members, the affected area is divided into districts as follows:

(i) District I: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties;

(ii) District II: Whitman county;

(iii) District III: Asotin, Columbia, Garfield, and Walla Walla counties;

(iv) District IV: Adams, Chelan, Douglas, Grant, and Okanogan counties; and

(v) District V: Benton, Franklin, Kittitas, Klickitat, and Yakima counties.

(c) The wheat producers in each district are entitled to elect one wheat producer member of the commission.

(3)(a) Each barley producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of bar-

ley in the district in and for which he or she is nominated and appointed. A barley producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of barley producer members, the affected area is divided into districts as follows:

(i) District VI: Asotin, Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman, and Yakima counties; and

(ii) District VII: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

(c) The barley producers in each district are entitled to elect one barley producer member of the commission.

(4) An industry member of the commission need not be a resident of Washington state, but must be involved with the handling, marketing, transportation, processing of, or research regarding wheat or barley produced in Washington state. An industry representative member must continue to satisfy these qualifications during his or her term of office.

(5)(a) The regular term of office of each producer member of the commission is three years from January 1st following his or her first appointment by the director and continues until a successor is appointed. The term of office for producer positions representing districts I, IV, and VII is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for producer positions representing districts II, III, V, and VI is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(b) The regular term of office of each industry representative member of the commission is three years from January 1st following his or her appointment by the director and until a successor is appointed. The term of office for the barley industry representative position is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 1) is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 2) is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(c) The director, or his or her appointee, is a permanent member of the commission. [2009 c 33 § 4.]

15.115.050 Initial appointments to the Washington grain commission—Expiration of interim terms. (1) The Washington grain commission replaces the Washington wheat commission and the Washington barley commission. To accomplish this transition, the initial appointments to the Washington grain commission are as follows:

(a) Within thirty days of July 26, 2009, the Washington wheat commission shall forward to the director the names of the currently appointed wheat producer members who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, wheat producer members are nominated and appointed under RCW 15.115.060 and 15.115.080.

(b) Within thirty days of July 26, 2009, the Washington barley commission shall forward to the director the names of two currently appointed producer members, one who resides in and is a barley producer in district VI and one who resides

in and is a barley producer in district VII who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, barley producer members are nominated and appointed under RCW 15.115.060 and 15.115.080.

(c) Within thirty days of July 26, 2009, the Washington wheat commission shall forward to the director the names of the currently appointed wheat industry representative members who shall be appointed to the interim terms specified in subsection (3) of this section. Thereafter the director shall appoint wheat industry representative members under RCW 15.115.070 and 15.115.080.

(d) Within thirty days of July 26, 2009, the Washington barley commission shall forward to the director the name of one of the currently appointed barley industry representative members who shall be appointed to the interim term specified in subsection (3) of this section. Thereafter the director shall appoint the barley industry representative member under RCW 15.115.070 and 15.115.080.

(2) Interim terms for producer members expire as follows:

(a) Districts I, IV, and VII: December 31, 2010; and

(b) Districts II, III, V, and VI: December 31, 2011.

(3) Interim terms for industry representative members expire as follows:

(a) Barley industry representative: December 31, 2010;

(b) Wheat industry representative (position 1): December 31, 2010; and

(c) Wheat industry representative (position 2): December 31, 2011.

(4) The initial appointments under this section must be made within sixty days of July 26, 2009. [2009 c 33 § 5.]

15.115.060 Producer members of the commission—Appointment—Nomination—Advisory ballot and advisory vote. (1) The director shall appoint the producer members of the commission.

(2) Candidates for producer positions on the commission must be nominated to the director in accordance with this section.

(3)(a) The director shall mail nominating petitions for producer members not earlier than September 17th and not later than October 2nd in each district in which an open producer position will occur at the end of the year. Each nominating petition must be signed by the candidate and by at least five affected producers of the district from which the nominated candidate would be appointed.

(b) Signed nominating petitions must be filed with the director. A nominating petition is filed when it is postmarked by the deadline.

(c) The director shall determine the final date for filing nominating petitions and shall display that final date on the face of each nominating petition mailed under this subsection. The final date may not be earlier than October 8th and not later than October 13th in each district in which an open producer position will occur at the end of the year.

(4)(a) The director shall prepare an advisory ballot for each district in which an open producer position will occur. All candidates from a district who have been nominated as a producer member in accordance with subsection (3) of this section shall have their names placed on the advisory ballot for that district.

(b) The director shall mail advisory ballots to all affected producers in each district in which an open producer position will occur. Advisory ballots must be mailed not earlier than October 18th and not later than November 2nd in each district in which an open producer position will occur at the end of the year.

(c) Only those completed advisory ballots may be counted that are sent to the director and postmarked not later than November 25th in each district in which an open producer position will occur at the end of the year. Each advisory ballot must display the following language on its face: "Each completed advisory ballot must be postmarked not later than November 25, [insert year] to be counted."

(d) Each affected producer is entitled to one vote.

(e) The advisory vote must be conducted in a manner so that it is a secret ballot.

(5)(a) If two or more candidates for a position are named in valid petitions, an advisory vote must be held. If only one candidate for a position is named in valid petitions, an advisory vote need not be held, and the director may appoint that candidate or request an additional candidate from the commission for appointment consideration. If a candidate for a position is not named in any valid petition, the commission shall submit a candidate for the director's appointment consideration. Not more than one commission member may be part of the same person under this chapter.

(b) The director may request of any candidate whose name is forwarded to the director for potential appointment that the candidate submit a letter stating why he or she wishes to be appointed to the commission.

(c) If two or more candidates receive votes in an advisory vote, the director may select either of the two candidates receiving the most votes for the position or may reject both candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director. If no candidate has been nominated in a petition under subsection (3) of this section, the director shall make an appointment to the position as provided in RCW 15.115.080.

(6) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made. [2009 c 33 § 6.]

15.115.070 Industry representative member of the commission—Appointment. (1) The director shall appoint the industry representative members of the commission.

(2) Not later than November 1st preceding the expiration of an industry representative member's term of office, the commission shall, by majority vote of a quorum of the commission, select a qualified candidate for the industry representative position and forward the name of the candidate to the director.

(3) The director may select the candidate for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director.

(4) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made. [2009 c 33 § 7.]

15.115.080 Vacancy on the commission. In the event of a vacancy on the commission, the remaining members shall recommend to the director the name of a person qualified for appointment to the vacant position. The director may appoint that person for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director. [2009 c 33 § 8.]

15.115.090 Removal of a commission member. If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, a majority of a quorum of the commission may recommend in writing to the director that the commission member be removed from his or her position on the commission. Upon receiving this recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position is then vacant and must be filled as set forth in this chapter. [2009 c 33 § 9.]

15.115.100 Membership in associations with similar objectives—Contracting with such associations. (1) Any member of the commission also may be a member or officer of an association which has similar objectives for which the agricultural commission was formed.

(2) An agricultural commission also may contract with such an association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into, and provided that any members with potential conflicts of interest comply with applicable provisions in chapter 42.52 RCW. [2009 c 33 § 10.]

15.115.110 Meetings—Proposed budget—Notice—Voting requirements. (1) The commission shall hold regular meetings, at least quarterly, with the time, date, and place to be determined prior to the new calendar year and published in the state register as required in RCW 42.30.075.

(2) The commission may call special meetings as provided for in RCW 42.30.080.

(3) The commission shall hold an annual meeting. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be given by the commission at least ten days prior to the meeting through the regular news media.

(4) Any action taken by the commission requires the majority vote of the members present, provided a quorum is present.

(5) All commission meetings are open and public and must be conducted in accordance with chapter 42.30 RCW. [2009 c 33 § 11.]

15.115.120 Quorum requirements—Compensation—Travel expenses. (1) A majority of the voting members constitute a quorum for the transaction of all business and for carrying out the duties of the commission.

(2) A member of the commission shall not receive any salary or other compensation from the commission, except that each member of the commission is compensated in accordance with RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060. Employees of the commission also may be reimbursed subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060 when on official commission business. [2009 c 33 § 12.]

15.115.130 Transfer of powers, duties, assets, etc., to the Washington grain commission. (1) The Washington grain commission is the successor in interest to the Washington wheat commission and the Washington barley commission and is vested with all powers and duties transferred to it under this chapter and other such powers and duties as may be authorized by law.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Washington wheat commission or Washington barley commission must be delivered to the custody of the Washington grain commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property owned or employed by the Washington wheat commission or Washington barley commission must be delivered to the Washington grain commission. The Washington grain commission shall ensure the timely transfers of all legal titles, registrations, and licenses made necessary by this subsection. All funds, accounts, investments, credits, or other assets held by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission. All debts, liabilities, and obligations owed by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission.

(3) All employees of the Washington wheat commission or Washington barley commission are transferred to the Washington grain commission.

(4) Beginning with the final initial appointment made under RCW 15.115.050, the interim commissioners shall submit timely reports to the director summarizing the progress made in completing the actions required under this section and any other actions necessary to complete the transition provided for in this chapter.

(5) When the interim commissioners have completed the actions required under this section and any other actions necessary to complete the transition provided for in this chapter, they shall so certify in writing to the director. The Washington wheat commission and Washington barley commission cease to exist as of the date that certification is received by the director. Once the director has received the certification, the director is authorized and shall take action to repeal the marketing orders addressing wheat or barley.

(6) All actions required under this section must be completed by the interim commissioners no later than one hundred twenty days after the final initial appointment is made under RCW 15.115.050.

(7) RCW 15.66.157 and 15.66.160 do not apply to the Washington wheat commission and the Washington barley commission. [2009 c 33 § 13.]

15.115.140 Powers and duties. (1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with *chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 17; 2011 c 60 § 4; 2009 c 33 § 14.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2011 c 60 § 4 and by 2011 c 103 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

15.115.150 Director's duties. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of wheat and barley; and

(b) The establishment and effectuation of market research projects, market development projects, or both, to the end that the marketing and utilization of wheat and barley may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning any agricultural commodity.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall review and make a determination of all submissions described in this section in a timely manner. [2009 c 33 § 15.]

15.115.160 Rule-making proceedings. (1) Except as provided in subsection (2) of this section, all rule-making proceedings conducted under this chapter must be in accordance with chapter 34.05 RCW.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and

43.135.055 and chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum.

(3) Rules, regulations, and orders made by the commission must be filed with the director and become effective as provided in RCW 34.05.380. [2009 c 33 § 16.]

15.115.170 Liquor produced from wheat or barley.

(1) The commission may receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in subsection (2) of this section.

(2) The commission may engage directly or indirectly in the promotion of liquor produced from wheat or barley grown in Washington including, without limitation, the acquisition in any lawful manner and the dissemination without charge of the liquor. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer under Title 66 RCW. This dissemination without charge may be solely for agricultural development or trade promotion, and not for fund-raising purposes under RCW 15.115.140(2)(u). Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, or promotion of wheat or barley grown in Washington, or research related to that marketing, advertising, or promotion.

(3) The commission shall adopt rules governing promotional hosting expenditures by its employees, agents, or commission members under RCW 15.04.200. [2009 c 33 § 17.]

15.115.180 Promotional printing and literature—Contracts. (1) The restrictive provisions of *chapter 43.78 RCW do not apply to promotional printing and literature for the commission.

(2) All promotional printing contracts entered into by the commission must be executed and performed under conditions of employment that substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such a provision of any contract is grounds for cancellation of the contract. [2009 c 33 § 19.]

***Reviser's note:** Chapter 43.78 RCW was entirely repealed or recodified by 2011 1st sp.s. c 43 § 306.

15.115.190 Handling, accounting, and disbursement of moneys. (1) All money received by the commission from the assessment levied under this chapter and all moneys transferred to the commission under RCW 15.115.130(2) must be deposited in the banks designated by the commission and disbursed by order of the commission. RCW 43.01.050 does not apply to money collected under this chapter.

(2) The commission shall adopt rules or establish policies as it determines necessary to ensure proper accounting and disbursement of moneys received and held by the commission. [2009 c 33 § 20.]

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15.115.200 Bond requirements. Unless covered by a blanket bond covering officials or employees of the state of Washington, every administrator, employee, or other person occupying a position of trust for the commission and every commission member actually handling or drawing upon funds shall give a bond in the penal amount as may be required by the commission, the premium for which bond or bonds must be paid by the commission. [2009 c 33 § 21.]

15.115.210 Limitation of liability. (1) Obligations incurred by the commission and any other liabilities or claims against the commission are enforceable only against the assets of the commission and, except to the extent of those assets, liability for the debts or actions of the commission does not exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity.

(2) Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. A person or employee may not be held individually responsible for any act or omission of any other commission members. The liability of the commission members is several and not joint, and a member is not liable for the default of any other member. This subsection confirms that commission members have been and continue to be state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW.

(3) In any civil or criminal action or proceeding for violation of any statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2009 c 33 § 22.]

15.115.220 Copies of proceedings, records, and acts of the commission admissible in court as prima facie evidence of the truth of the statements contained therein. Copies of the proceedings, records, and acts of the commission, when certified by the chair, are admissible in any court as prima facie evidence of the truth of the statements contained therein. [2009 c 33 § 23.]

15.115.230 Application of RCW 42.56.380—Use of commercial information and records. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used,

if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2009 c 33 § 24.]

15.115.240 Commission shall reimburse department for certain costs—Funding of staff support. (1) The commission shall reimburse the department for all costs incurred by the department for actions necessary to carry out this chapter, including the adoption of rules, facilitating or conducting nominations or advisory votes, and the review and approval required under RCW 15.115.150.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2009 c 33 § 25.]

15.115.250 Preparation of lists of producers and handlers of wheat and barley. (1) The commission shall prepare a list of all producers of wheat and a list of all producers of barley, which must include for each producer his or her name and address and the amount, by unit, of wheat or barley produced during the past three years.

(2) The commission shall prepare a list of all persons who handle wheat and all persons who handle barley, which must include for each handler his or her name and address and the amount, by unit, of wheat or barley handled during the past three years.

(3) It is the responsibility of each producer or handler to ensure that his or her correct address is filed with the commodity commission and to submit production data and handling data to the commission as prescribed in this chapter.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commission. The lists must be corrected and brought up-to-date in accordance with evidence and information provided to the commission.

(5) For all purposes of giving notice, conducting advisory votes, and holding referenda, the applicable list corrected up to the day preceding the date the list is certified by the commission is the list of all affected producers entitled to notice or to vote. Inadvertent failure to notify an affected producer does not invalidate a proceeding conducted under this chapter.

(6) At the director's request when conducting a referendum for the commission, the commission shall provide the director a certified list of affected producers from the commission records. The list must include all information required by the director to conduct a referendum under this chapter, must be used to determine assent as provided in this

chapter, and must be kept in the rule-making file by the director. [2009 c 33 § 26.]

15.115.260 Annual assessments—Adjustments—Referendum—Temporary reduction—Limit on annual assessment. (1)(a) The initial annual assessments are the amounts most recently approved by referendum by wheat producers and barley producers and effective at the time the grain commission is established:

(i) The initial annual assessment on wheat is three-fourths of one percent of the net receipts at the first point of sale;

(ii) The initial annual assessment on barley is one percent of the net receipts at the first point of sale.

(b) The initial annual assessments established in this subsection are effective unless and until changed pursuant to the procedure in subsection (2) of this section.

(2)(a) If the commission determines, based on information available to it, that the revenue from the assessment levied on wheat or barley under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall adopt a resolution setting forth the needs of the industry, the extent and probable cost of the commission activities identified as necessary to address the needs of the industry together with a brief statement justifying each activity, the proposed new assessment rate, and the expected revenue from the proposed assessment levied. The resolution must be submitted to the director for review and approval.

(b) If the director objects to the proposed new assessment rate, the director shall explain the reasons for the objection to the commission in writing. The commission may adopt a revised resolution and submit it to the director for review and approval.

(c) Upon receiving the director's approval and with the director's oversight, the commission may conduct a referendum to determine whether affected producers assent to the proposed new assessment rate, or may refer the matter to the director to conduct the referendum on behalf of the commission. Only wheat producers may vote on a proposed new assessment rate on wheat, and only barley producers may vote on a proposed new assessment rate on barley.

(i) The producers have assented to the new rate if more than fifty percent by number and more than fifty percent by volume of those replying assent. The determination by volume is made on the basis of volume as determined in the list of affected producers created under RCW 15.115.250.

(ii) Results of the referendum must be communicated via the news media.

(iii) If the requisite assent is given, the commission shall adopt the new rate at its next meeting. The new rate must be adopted by rule in accordance with chapter 34.05 RCW, except as provided in RCW 15.115.160.

(3)(a) Notwithstanding the provisions in subsection (2) of this section, the commission may, by majority vote of a quorum of its members, adopt a finding that its current revenue substantially exceeds that needed to support the current needs of the industry and the current cost of commission activities and order a temporary reduction in the annual assessments below the rate currently authorized under subsection (1) of this section.

(b) With the director's approval, such a reduction commences on July 1st following the commission's action and expires automatically on June 30th of the subsequent year unless extended by a new action of the commission under this subsection.

(c) Any action taken under this subsection must be communicated to affected producers via the news media and any other means it deems effective.

(4) The annual assessment authorized in this chapter may not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of wheat or barley during the year to which the assessment applies. [2009 c 33 § 27.]

15.115.270 Collection of assessment—Failure to pay assessment—Civil action—Venue. (1) The collection of the assessment made and levied by the commission must be paid by the producer upon all commercial quantities of wheat and all commercial quantities of barley sold, processed, stored, or delivered for sale, processing, or storage by the producer. However, an assessment may not be levied or collected on wheat or barley grown and used by the producer for feed, seed, or personal consumption.

(2) Handlers including warehouse operators, processors, and feedlots receiving wheat or barley in commercial quantities from producers shall collect the assessment made and levied by the commission from each producer whose production they handle and remit the assessment to the commission on a monthly basis. Affected units of wheat or barley must not be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment under this chapter has been paid and the receipt issued, but liability under this chapter does not attach to common carriers in the regular course of their business.

(3) Any due and payable assessment levied under this chapter constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission on a monthly basis. In the event any person fails to pay the full amount of such an assessment, the commission may add to the unpaid assessment an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of the unpaid assessment. In the event of failure of the person or persons to pay any due and payable assessment, the commission may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the additional ten percent, and the action must be tried and judgment rendered as in any other cause of action for debt due and payable. Venue for an action against a person owing a due and payable assessment to the commission is in Spokane county or a county in which the person produces or handles wheat or barley. [2011 c 336 § 417; 2009 c 33 § 28.]

15.115.280 Use of moneys received by the commission under this chapter. (1) All moneys collected or otherwise received by the commission under this chapter must be used solely by and for the commission and may not be used for any other commission or the department, except as otherwise provided in this chapter. These moneys must be depos-

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ited in accounts in the name of the commission in any bank which is a state depository. All expenses and disbursements incurred and made under this chapter must be paid from moneys collected and received under this chapter without the necessity of a specific legislative appropriation, and all moneys deposited for the account of any order must be paid from the account by check or voucher in the form and in the manner and upon the signature of the person as may be prescribed by the commission. RCW 43.01.050 is not applicable to such an account or any moneys so received, collected, or expended.

(2) The commission shall ensure that the expenditure of assessments collected from wheat producers and moneys transferred from the wheat commission under RCW 15.115.130(2) are used for purposes related to the wheat industry and that the expenditure of assessments collected from barley producers and moneys transferred from the barley commission under RCW 15.115.130(2) are used for purposes related to the barley industry. However, this section does not prevent assessments from wheat, assessments from barley, and moneys transferred from the wheat commission or barley commission under RCW 15.115.130(2) to be combined or used together for activities, projects, and other endeavors that benefit both the wheat and barley industries. [2009 c 33 § 29.]

15.115.290 Investment of funds of the commission.

(1) Any funds of the commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded those accounts by the federal deposit insurance corporation.

(2) This section applies to all funds which may be lawfully so invested, which in the judgment of the commission are not required for immediate expenditure. The authority granted by this section is not exclusive and is cumulative and in addition to other authority provided by law for the investment of the funds including, but not limited to, authority granted under chapters 39.58, 39.59, and 43.84 RCW. [2009 c 33 § 30.]

15.115.300 Proof of eligibility to vote or hold a position on the commission—Records—Inspection by commission—Confidentiality of information—Limitation of section.

(1) To prove eligibility to vote or hold a position on the commission, each producer must show records of sales of commercial quantities of wheat or barley sold within the past three years if requested by the commission.

(2) Each handler shall keep a complete and accurate record of all wheat and barley handled.

(3) Handlers' records must be in the form and contain the information as the commission may by rule prescribe, must be preserved for a period of three years, and are subject to inspection at any time upon demand of the commission or its agents.

(4) The commission through its agents may enter and inspect the premises and records of any handler of wheat or barley for the purpose of enforcing this chapter. The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind from any handler and from any person having, either

directly or indirectly, actual or legal control of or over the premises, books, records, documents, or other writings, for the purpose of enforcing this chapter or rules adopted under this chapter.

(5) All information furnished to or acquired by the commission or by an agent of the commission under this section must be kept confidential by all officers, employees, and agents of the commission, except as may be necessary in a suit or other legal proceeding brought by, on behalf of, or against the commission or its employees or agents involving the enforcement of this chapter or rules adopted under this chapter.

(6) This section does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this chapter, which statements do not identify the information furnished by any person; or

(b) The publication by the commission or the director of the name of any person violating this chapter or rules adopted under this chapter, together with a statement of the particular provisions and the manner of the violation. [2009 c 33 § 31.]

15.115.310 Penalties—Injunctions—Referring a violation to the county prosecutor—Jurisdiction. (1) It is a misdemeanor for any person willfully to:

(a) Violate or aid in the violation of this chapter or rules adopted under this chapter;

(b) Submit a false or fraudulent report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter; or

(c) Fail or refuse to submit a report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter.

(2) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director or the commission is entitled to an injunction in a court of competent jurisdiction to prevent further violation and to a decree of specific performance, and to a temporary restraining order and injunction pending litigation.

(3) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director, the commission, or any affected producer on joining the commission may refer the violation to the prosecutor in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(4) The superior courts are hereby vested with jurisdiction to enforce this chapter and the rules of the commission issued under this chapter, and to prevent and restrain violations of this chapter. [2009 c 33 § 32.]

15.115.900 Severability—2009 c 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 33 § 39.]

Title 16

ANIMALS AND LIVESTOCK

(Formerly: Animals, estrays, brands, and fences)

Chapters

- 16.04** Trespass of animals—General.
- 16.08** Dogs.
- 16.10** Dogs—Licensing—Dog control zones.
- 16.24** Stock restricted areas.
- 16.30** Dangerous wild animals.
- 16.36** Animal health.
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- 16.49** Custom slaughtering.
- 16.50** Humane slaughter of livestock.
- 16.52** Prevention of cruelty to animals.
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- 16.65** Public livestock markets.
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- 16.68** Disposal of dead animals.
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- 16.72** Fur farming.

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Dog guide or service animal, interfering with: RCW 9.91.170.

Dog license tax, counties: Chapter 36.49 RCW.

Grazing ranges: Chapter 79.13 RCW, RCW 79.10.125.

Harming a police dog or police horse: RCW 9A.76.200.

Killing of person by vicious animal: RCW 9A.32.070.

Larcenous appropriation of livestock: Chapter 9A.56 RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Race horses: Chapter 67.16 RCW.

Stealing horses or cattle as larceny: Chapter 9A.56 RCW.

Chapter 16.04 RCW

TRESPASS OF ANIMALS—GENERAL

Sections

- 16.04.010 Trespassing animals—Restraint—Damages and costs.
- 16.04.015 Damages, liability.
- 16.04.020 Notice of restraint—Owner known.
- 16.04.025 Owner of animals unknown—Procedure.
- 16.04.030 Actions for damages.
- 16.04.040 Jurisdiction—Appeal.
- 16.04.045 Continuance.
- 16.04.050 Substituted service.
- 16.04.060 Sale—When costs may be charged to plaintiff.
- 16.04.070 Surplus—Disposition.
- 16.04.080 Stock on United States military reservation.
- 16.04.100 Trespass via fence damaged by wildlife.

Dangerous dogs: RCW 16.08.070 through 16.08.100.

Disturbance on public highway: RCW 9A.84.030.

Fences: Chapter 16.60 RCW.

16.04.010 Trespassing animals—Restraint—Damages and costs. Any person suffering damage done by any horses, mules, donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any land enclosed by lawful fence as provided in chapter 16.60 RCW or trespass while running at large in violation of chapter 16.24 RCW may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [1989 c 286 § 1; 1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

Damages to stock on unfenced railroad: RCW 81.52.050 through 81.52.070.

Pleading answer in action to recover property distrained: RCW 4.36.140.

Additional notes found at www.leg.wa.gov

16.04.015 Damages, liability. Except as provided under RCW 16.04.100, whenever any animals trespass as provided in RCW 16.04.010, the owner or person having possession of such animal shall be liable for all damages the owner or occupant may sustain by reason of such trespass. [1994 c 263 § 1; 1989 c 286 § 2.]

Additional notes found at www.leg.wa.gov

16.04.020 Notice of restraint—Owner known. Whenever any animals are restrained as provided in RCW 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: PROVIDED, He or she knows to whom such animals belong. [2011 c 336 § 418; 1893 c 31 § 2; RRS § 3091. FORMER PART OF SECTION: 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092, now codified as RCW 16.04.025.]

16.04.025 Owner of animals unknown—Procedure. If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the

notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.24 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit. [1989 c 286 § 21; 1985 c 415 § 24; 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092. Formerly RCW 16.04.020, part.]

Additional notes found at www.leg.wa.gov

16.04.030 Actions for damages. If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, and the costs, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, or in case of horses, mares, mules and asses, within twenty-four hours from the time such notice was posted, if served by posting the same, and in case of cattle, goats, sheep and swine within ten days from the time of such posting, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as modified in RCW 16.04.010 through 16.04.070. If such suit is commenced in superior court the summons shall require the defendant to appear within five days from the date of service of such summons, if served personally. [1925 ex.s. c 56 § 3; 1893 c 31 § 4; RRS § 3093.]

16.04.040 Jurisdiction—Appeal. District judges shall have exclusive jurisdiction of all actions and proceedings under RCW 16.04.010 through 16.04.070 when the damages claimed do not exceed one hundred dollars: PROVIDED, HOWEVER, That any party considering himself or herself aggrieved shall have the right of appeal to the superior court as in other cases. [1987 c 202 § 177; 1893 c 31 § 9; RRS § 3098.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.04.045 Continuance. If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in RCW 16.04.050 provided, if the proper defendant be unknown to plaintiff. [1893 c 31 § 6; RRS § 3095. Formerly RCW 16.04.050, part.]

16.04.050 Substituted service. If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a newspaper of general circulation in the area where the plaintiff resides

less than ten days previous to the day of trial. [1985 c 469 § 8; 1893 c 31 § 7; RRS § 3096. FORMER PART OF SECTION: 1893 c 31 § 6; RRS § 3095, now codified as RCW 16.04.045.]

16.04.060 Sale—When costs may be charged to plaintiff. Upon the trial of an action as herein provided [RCW 16.04.010 through 16.04.070] the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: PROVIDED, That no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant. [1893 c 31 § 5; RRS § 3094.]

16.04.070 Surplus—Disposition. If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [1893 c 31 § 8; RRS § 3097.]

16.04.080 Stock on United States military reservation. It shall be unlawful for the owner of any livestock to allow such livestock to run at large or be upon any United States military reservation upon which field artillery firing or other target practice with military weapons is conducted. Any owner who permits livestock to run at large or be upon any such reservation shall do so at the risk of such owner and such owner shall have no claim for damages if such livestock is injured or destroyed while so running at large on such reservation: PROVIDED, HOWEVER, That the commanding officer of any such United States military reservation may issue permits for specific areas and for specific periods of time when firing will not be conducted thereon authorizing the owner of such livestock to permit the same to run at large or be upon any such military reservation. [1937 c 101 § 1; RRS § 3068-1.]

16.04.100 Trespass via fence damaged by wildlife. If damages are caused by a trespassing animal, neither the state nor the owner of the animal shall be liable if the owner of the animal can prove that the trespass is due to damage caused by wildlife to a lawful fence and, in a stock restricted area, the owner of the animal did not have a reasonable opportunity to repair the fence. The state shall pay all costs of transportation, advertising, legal proceedings, and keep of an animal that has been restrained pursuant to RCW 16.04.010. Claims filed under this section shall be processed according to the procedures under chapter 4.92 RCW. [1994 c 263 § 3.]

Chapter 16.08 RCW**DOGS**

(Formerly: Dangerous dogs)

Sections

16.08.010	Liability for injury to stock by dogs.
16.08.020	Dogs injuring stock may be killed.
16.08.030	Marauding dog—Duty of owner to kill.
16.08.040	Dog bites—Liability.
16.08.050	Entrance on private property, when lawful.
16.08.060	Provocation as a defense.
16.08.070	Dangerous dogs and related definitions.
16.08.080	Dangerous dogs—Notice to owners—Right of appeal—Certificate of registration required—Surety bond—Liability insurance—Restrictions.
16.08.090	Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous.
16.08.100	Dangerous dogs—Confiscation—Conditions—Duties of animal control authority—Penalties and affirmative defenses for owners of dogs that attack—Dog fights, penalty.

16.08.010 Liability for injury to stock by dogs. The owner or keeper of any dog shall be liable to the owner of any animal killed or injured by such dog for the amount of damages sustained and costs of collection, to be recovered in a civil action. [1985 c 415 § 14; 1929 c 198 § 5; RRS § 3106. Prior: 1919 c 6 § 5; RCS § 3106.]

16.08.020 Dogs injuring stock may be killed. It shall be lawful for any person who shall see any dog or dogs chasing, biting, injuring or killing any sheep, swine or other domestic animal, including poultry, belonging to such person, on any real property owned or leased by, or under the control of, such person, or on any public highway, to kill such dog or dogs, and it shall be the duty of the owner or keeper of any dog or dogs so found chasing, biting or injuring any domestic animal, including poultry, upon being notified of that fact by the owner of such domestic animals or poultry, to thereafter keep such dog or dogs in leash or confined upon the premises of the owner or keeper thereof, and in case any such owner or keeper of a dog or dogs shall fail or neglect to comply with the provisions of this section, it shall be lawful for the owner of such domestic animals or poultry to kill such dog or dogs found running at large. [1929 c 198 § 6; RRS § 3107. Prior: 1919 c 6 § 6; 1917 c 161 § 6; RCS § 3107.]

16.08.030 Marauding dog—Duty of owner to kill. It shall be the duty of any person owning or keeping any dog or dogs which shall be found killing any domestic animal to kill such dog or dogs within forty-eight hours after being notified of that fact, and any person failing or neglecting to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and it shall be the duty of the sheriff or any deputy sheriff to kill any dog found running at large (after the first day of August of any year and before the first day of March in the following year) without a metal identification tag. [1929 c 198 § 7; RRS § 3108. Prior: 1919 c 6 § 7; 1917 c 161 § 7; RCS § 3108.]

16.08.040 Dog bites—Liability. (1) The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(2) This section does not apply to the lawful application of a police dog, as defined in RCW 4.24.410. [2012 c 94 § 1; 1941 c 77 § 1; Rem. Supp. 1941 § 3109-1.]

16.08.050 Entrance on private property, when lawful. A person is lawfully upon the private property of such owner within the meaning of RCW 16.08.040 when such person is upon the property of the owner with the express or implied consent of the owner: PROVIDED, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted. [1979 c 148 § 1; 1941 c 77 § 2; Rem. Supp. 1941 § 3109-2.]

16.08.060 Provocation as a defense. Proof of provocation of the attack by the injured person shall be a complete defense to an action for damages. [1941 c 77 § 3; Rem. Supp. 1941 § 3109-3.]

16.08.070 Dangerous dogs and related definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.

(1) "Potentially dangerous dog" means any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills a domestic animal without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans.

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole

or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal. [2002 c 244 § 1; 1987 c 94 § 1.]

Additional notes found at www.leg.wa.gov

16.08.080 Dangerous dogs—Notice to owners—Right of appeal—Certificate of registration required—Surety bond—Liability insurance—Restrictions. (1) Any city or county that has a notification and appeal procedure with regard to determining a dog within its jurisdiction to be dangerous may continue to utilize or amend its procedure. A city or county animal control authority that does not have a notification and appeal procedure in place as of June 13, 2002, and seeks to declare a dog within its jurisdiction, as defined in subsection (7) of this section, to be dangerous must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested.

(2) The notice must state: The statutory basis for the proposed action; the reasons the authority considers the animal dangerous; a statement that the dog is subject to registration and controls required by this chapter, including a recitation of the controls in subsection (6) of this section; and an explanation of the owner's rights and of the proper procedure for appealing a decision finding the dog dangerous.

(3) Prior to the authority issuing its final determination, the authority shall notify the owner in writing that he or she is entitled to an opportunity to meet with the authority, at which meeting the owner may give, orally or in writing, any reasons or information as to why the dog should not be declared dangerous. The notice shall state the date, time, and location of the meeting, which must occur prior to expiration of fifteen calendar days following delivery of the notice. The owner may propose an alternative meeting date and time, but such meeting must occur within the fifteen-day time period set forth in this section. After such meeting, the authority must issue its final determination, in the form of a written order, within fifteen calendar days. In the event the authority declares a dog to be dangerous, the order shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the signature of the person who made the determination. The order shall be sent by regular and certified mail, return receipt requested, or delivered in person to the owner at the owner's last address known to the authority.

(4) If the local jurisdiction has provided for an administrative appeal of the final determination, the owner must follow the appeal procedure set forth by that jurisdiction. If the local jurisdiction has not provided for an administrative appeal, the owner may appeal a municipal authority's final determination that the dog is dangerous to the municipal court, and may appeal a county animal control authority's or county sheriff's final determination that the dog is dangerous to the district court. The owner must make such appeal within twenty days of receiving the final determination. While the appeal is pending, the authority may order that the dog be confined or controlled in compliance with RCW 16.08.090. If the dog is determined to be dangerous, the owner must pay all costs of confinement and control.

(5) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section and RCW 16.08.090 and 16.08.100 shall not apply to police dogs as defined in RCW 4.24.410.

(6) Unless a city or county has a more restrictive code requirement, the animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least two hundred fifty thousand dollars, payable to any person injured by the dangerous dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least two hundred fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

(7)(a)(i) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(ii) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

(iii) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

(b) This subsection does not apply if a city or county does not allow dangerous dogs within its jurisdiction.

(8) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs.

(9) Nothing in this section limits a local authority in placing additional restrictions upon owners of dangerous dogs. This section does not require a local authority to allow a dangerous dog within its jurisdiction. [2002 c 244 § 2; 1989 c 26 § 3; 1987 c 94 § 2.]

Additional notes found at www.leg.wa.gov

16.08.090 Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous. (1) It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

(2) Potentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs.

(3) Dogs shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a wilful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime. [1987 c 94 § 3.]

Additional notes found at www.leg.wa.gov

16.08.100 Dangerous dogs—Confiscation—Conditions—Duties of animal control authority—Penalties and affirmative defenses for owners of dogs that attack—Dog fights, penalty. (1) Any dangerous dog shall be immediately confiscated by an animal control authority if the: (a) Dog is not validly registered under RCW 16.08.080; (b) owner does not secure the liability insurance coverage required under RCW 16.08.080; (c) dog is not maintained in the proper enclosure; or (d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. The owner must pay the costs of confinement and control. The animal control authority must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested, specifying the reason for the confiscation of the dangerous dog, that the owner is responsible for payment of the costs of confinement and control, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within twenty days. The animal control authority shall destroy the confiscated dangerous dog in an expeditious and humane manner if any deficiencies required by this subsection are not corrected within twenty days of notification. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

(2) If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that he or she was in compliance with the requirements for ownership of a dangerous dog pursuant to this chapter and the person or domestic animal attacked or bitten by the defendant's dog trespassed on the defendant's real or personal property or provoked the defendant's dog without justification or excuse. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether or not the dog has previously been declared potentially dangerous or dangerous, shall, upon conviction, be guilty of a class C felony punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the human severely

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injured or killed by the defendant's dog: (a) Trespassed on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of young children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog; or (b) provoked the defendant's dog without justification or excuse on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of young children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog. In such a prosecution, the state has the burden of showing that the owner of the dog either knew or should have known that the dog was potentially dangerous as defined in this chapter. The state may not meet its burden of proof that the owner should have known the dog was potentially dangerous solely by showing the dog to be a particular breed or breeds. In addition, the dog shall be immediately confiscated by an animal control authority, quarantined, and upon conviction of the owner destroyed in an expeditious and humane manner.

(4) Any person entering a dog in a dog fight is guilty of a class C felony punishable in accordance with RCW 9A.20.021. [2002 c 244 § 3; 1987 c 94 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 16.10 RCW

DOGS—LICENSING—DOG CONTROL ZONES

Sections

16.10.010	Purpose.
16.10.020	Dog control zones—Determination of need by county commissioners.
16.10.030	Dog control zones—Public hearing, publication of notice.
16.10.040	Dog control zones—Regulations—License fees, collection, disposition.

Pet animals—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.10.010 Purpose. The purpose of this chapter is to provide for the licensing of dogs within specific areas of particular counties. [1969 c 72 § 1.]

16.10.020 Dog control zones—Determination of need by county commissioners. County commissioners may, if the situation so requires, establish dog control zones within high density population districts, or other specified areas, of a county outside the corporate limits of any city, and outside the corporate limits of any organized township. For such zones, licensing regulations may be established which shall not necessarily be operative in sparsely settled rural districts, or in other portions of the county where they may not be needed. In determining the need for such zones, and in drawing their boundaries, county commissioners shall take into consideration the following factors:

(1) The density of population in the area proposed to be zoned;

(2) Zoning regulations, if any, in force in the area proposed to be zoned;

(3) The public health, safety and welfare within the area proposed to be zoned.

If the commissioners shall find that the area proposed to be zoned is heavily populated, or that the purposes for which the land is being used therein require that dogs be controlled, or that the health, safety, and welfare of the people in the area require such control, they may propose the establishment of a dog control zone. [1969 c 72 § 2.]

16.10.030 Dog control zones—Public hearing, publication of notice. In determining whether a dog control zone should be established, the county commissioners shall call a public hearing, notice of which shall be published once a week for each of four consecutive weeks prior thereto in a newspaper of general circulation within the proposed zone. At such a hearing, proponents and opponents of the proposed dog control zone may appear and present their views. The final decision of the commissioners with respect to the establishment of such a zone shall not be made until the conclusion of the hearing. [1969 c 72 § 3.]

16.10.040 Dog control zones—Regulations—License fees, collection, disposition. The county commissioners shall by ordinance promulgate the regulations to be enforced within a dog control zone. These shall include provisions for the control of unlicensed dogs and the establishment of license fees. The county sheriff and/or other agencies designated by the county commissioners shall be responsible for the enforcement of the act, including the collection of license fees. Fees collected shall be transferred to the current expense fund of each county. [1969 c 72 § 4.]

Chapter 16.24 RCW STOCK RESTRICTED AREAS

Sections

16.24.010	Restricted areas—Range areas.
16.24.020	Hearing—Notice.
16.24.030	Order establishing area—Publication.
16.24.040	Penalty.
16.24.050	Change of boundaries.
16.24.060	Road signs in range areas.
16.24.065	Stock at large in restricted areas—Running at large on state or federal land.
16.24.070	Stock on highway right-of-way—Limitations.
16.24.090	Animals at large—Limitations—Defense.
16.24.100	Prosecution—Proof of ownership.
16.24.110	Public nuisance—Impounding.
16.24.120	Impounding—Procedure.
16.24.130	Impounding—Notice—Copy to owner.
16.24.140	Impounding—Owner to pay costs.
16.24.150	Sale of impounded animal—Retroactive effect.
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16.24.230	Moving another's livestock from range.

16.24.010 Restricted areas—Range areas. The county legislative authority of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large. No territory so designated shall be less than two square miles in area.

RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large. [1989 c 286 § 4; 1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

Additional notes found at www.leg.wa.gov

16.24.020 Hearing—Notice. *Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county legislative authority of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in RCW 16.24.010 through 16.24.065. [1989 c 286 § 5; 1937 c 40 § 2; 1923 c 33 § 1; 1911 c 25 § 2; RRS § 3069.]

*Reviser's note: RCW 16.24.010 through 16.24.065 took effect March 1, 1937.

Additional notes found at www.leg.wa.gov

16.24.030 Order establishing area—Publication. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive weeks. [1989 c 286 § 6; 1937 c 40 § 3; 1923 c 33 § 2; 1911 c 25 § 3; RRS § 3070.]

Additional notes found at www.leg.wa.gov

16.24.040 Penalty. Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in RCW 16.24.030 or, violating any provision of this chapter, shall be guilty of a misdemeanor. [1975 c 38 § 1; 1911 c 25 § 4; RRS § 3071.]

16.24.050 Change of boundaries. When the county legislative authority of any county deem[s] it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in RCW 16.24.020. If the county legislative authority decides to change the boundary or boundaries of any stock restricted area or areas, it shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks. [1989 c 286 § 7; 1937 c 40 § 4; 1923 c 93 § 1; RRS § 3070-1.]

Additional notes found at www.leg.wa.gov

16.24.060 Road signs in range areas. At the point where a public road enters a range area, and at such other points thereon within such area as the county legislative authority shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK." [1989 c 286 § 8; 1937 c 40 § 5; RRS § 3070-2.]

Additional notes found at www.leg.wa.gov

16.24.065 Stock at large in restricted areas—Running at large on state or federal land. (1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area or to wander or stray upon the right-of-way of any public highway lying within a stock restricted area when not in the charge of some person.

(2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing. [1989 c 286 § 9; 1985 c 415 § 20; 1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

Additional notes found at www.leg.wa.gov

16.24.070 Stock on highway right-of-way—Limitations. It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon. [1989 c 286 § 10; 1937 c 189 § 127; RRS § 6360-127, part. Prior: 1927 c 309 § 41, part; RRS § 6362-41, part. FORMER PART OF SECTION: 1937 c 40 § 6; RRS § 3070-3, now codified as RCW 16.24.065. Formerly RCW 16.24.070 and 16.24.080.]

Additional notes found at www.leg.wa.gov

16.24.090 Animals at large—Limitations—Defense. Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses, mules, donkeys, cattle, sheep or swine shall not negligently allow them to run at large at any time or within any territory. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 RCW that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That such animals may be driven upon the highways while in charge of sufficient attendants. [1989 c 286 § 14; 1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

Additional notes found at www.leg.wa.gov

16.24.100 Prosecution—Proof of ownership. In any prosecution under chapter 16.24 RCW proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal. [1989 c 286 § 3; 1895 c 124 § 2; RRS § 3086. Formerly RCW 16.16.020.]

Additional notes found at www.leg.wa.gov

(2012 Ed.)

16.24.110 Public nuisance—Impounding. Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of chapter 16.24 RCW as now or hereafter amended, which are not restrained as provided by RCW 16.04.010, are declared to be a public nuisance. The sheriff of the county where found and the nearest brand inspector shall have authority to impound such animals which are not restrained as provided by RCW 16.04.010. [1989 c 286 § 11; 1985 c 415 § 16; 1979 c 154 § 6; 1975 1st ex.s. c 7 § 14; 1951 c 31 § 2. Formerly RCW 16.13.020.]

Additional notes found at www.leg.wa.gov

16.24.120 Impounding—Procedure. Upon taking possession of any livestock at large contrary to the provisions of this chapter, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he or she shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof. [2012 c 25 § 5. Prior: 2011 c 336 § 419; 2011 c 103 § 11; 1989 c 286 § 12; 1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3. Formerly RCW 16.13.030.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

16.24.130 Impounding—Notice—Copy to owner. The brand inspector shall cause to be published once in a newspaper published in the county where the animal was found, a notice of the impounding.

The notice shall state:

- (1) A description of the animal, including brand, tattoo or other identifying characteristics;
- (2) When and where found;
- (3) Where impounded; and
- (4) That if unclaimed, the animal will be sold at a public livestock market sale or other public sale, and the date of such sale: PROVIDED, That if no newspaper shall be published in such county, copies of the notice shall be posted at four commonly frequented places therein.

If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector, on or before the date of publication or posting, shall send a copy of the notice to the owner of record by registered mail. [1995 c 374 § 69; 1975 1st ex.s. c 7 § 16; 1951 c 31 § 4. Formerly RCW 16.13.040.]

Additional notes found at www.leg.wa.gov

16.24.140 Impounding—Owner to pay costs. Upon claiming any animal impounded under this chapter, the owner shall pay all costs of transportation, advertising, legal proceedings, and keep of the animal, except as provided under RCW 16.04.100. [1994 c 263 § 2; 1989 c 286 § 13; 1951 c 31 § 5. Formerly RCW 16.13.050.]

Additional notes found at www.leg.wa.gov

16.24.150 Sale of impounded animal—Retroactive effect. If no person shall claim the animal within ten days after the date of publication or posting of the notice, it shall be sold at the next succeeding public livestock market sale to be held at the sales yard where impounded, provided that in the director's discretion the department of agriculture may otherwise cause the animal to be sold at public sale.

The legislature intends this to be a clarification of existing law; therefore, this section shall have retroactive effect as of December 1, 1994. [1995 c 374 § 70; 1975 1st ex.s. c 7 § 17; 1951 c 31 § 6. Formerly RCW 16.13.060.]

Additional notes found at www.leg.wa.gov

16.24.160 Conduct of sale—Disposition of proceeds. The proceeds of the sale of animals impounded under this chapter, after deducting the costs of sale, shall be impounded in the estray fund of the department of agriculture, and if no valid claim is made within one year from the date of sale, the director of the department of agriculture shall transfer the proceeds of sale to the brand fund of the department to be used for the enforcement of this chapter. [1985 c 415 § 17; 1951 c 31 § 7. Formerly RCW 16.13.070.]

16.24.170 Purchase of animal, restrictions. No law enforcement officer shall, directly or indirectly, purchase any animal sold under the provisions of this chapter, or any interest therein. [1951 c 31 § 8. Formerly RCW 16.13.080.]

16.24.180 Castration or gelding of stock at large. It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1st and September 30th of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. If the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: PROVIDED, Such act of castration shall have been skillfully done by a person accustomed to doing the same: AND PROVIDED FURTHER, That if the person so taking up or capturing such animal, or causing it to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his or her duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the reasonable costs of keeping of said animal, and take and safely keep said animal thereafter within his or her own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay a reasonable sum for such act of castration, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he or she may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: AND PROVIDED FURTHER, That if

said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning. [2011 c 336 § 420; 1989 c 286 § 15; 1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081. Formerly RCW 16.20.010.]

Additional notes found at www.leg.wa.gov

16.24.190 Bull breed restrictions. It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run at large on any range area in this state any bull other than a registered bull of a recognized beef breed. All persons running cattle in common on any range area may, however, agree to run any purebred or crossbred bull of any breed, registered or unregistered, as they may deem appropriate for their area. [1986 c 177 § 1; 1985 c 415 § 18; 1917 c 111 § 1; RRS § 3082. Formerly RCW 16.20.020.]

16.24.200 Bull ratio restrictions. Before any person, firm, association or corporation turns upon a range area in this state any female cattle of breeding age of more than fifteen in number, they shall procure and turn with said female breeding cattle one registered bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over. All persons running cattle in common on any range area may, however, agree to any other proportion of bulls to female cattle of breeding age as they may deem appropriate for their area. [1986 c 177 § 2; 1917 c 111 § 2; RRS § 3083. Formerly RCW 16.20.030.]

16.24.210 Bull breed and ratio restrictions not applicable to counties west of Cascades. RCW 16.24.190 and 16.24.200 shall not apply to counties lying west of the summit of the Cascade mountains. [1989 c 286 § 17; 1985 c 415 § 19. Formerly RCW 16.20.035.]

Additional notes found at www.leg.wa.gov

16.24.220 Separating estrays from herd. It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large. [1989 c 286 § 16; 1987 c 202 § 181; 1969 ex.s. c 199 § 14; Code 1881 § 2537; RRS § 3050. Prior: 1869 pp 408, 409 §§ 1, 2. Formerly RCW 16.28.160.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

16.24.230 Moving another's livestock from range. No person shall remove any livestock belonging to another from the range on which they are permitted to run at large, without the prior consent of the owner thereof. The owner of any livestock may move his or her own livestock, together with such other livestock as cannot be separated from his or her own, to the nearest corral, or other facility in order to sep-

arate his or her own livestock, if the other livestock are returned to the same location from which they were moved within twenty-four hours. [1985 c 415 § 21; 1891 c 12 § 1; RRS § 3048. Formerly RCW 16.28.170, part. Formerly RCW 16.28.165.]

Chapter 16.30 RCW
DANGEROUS WILD ANIMALS

Sections

16.30.005	Intent.
16.30.010	Definitions.
16.30.020	Exceptions.
16.30.030	Prohibited behavior.
16.30.040	Confiscation—Duties of animal control authority or law enforcement officer.
16.30.050	City or county ordinances.
16.30.060	Violations—Civil penalty.
16.30.070	Enforcement of provisions.
16.30.900	Severability—2007 c 238.

16.30.005 Intent. It is the intent of the state of Washington to protect the public against the serious health and safety risks that dangerous wild animals pose to the community. [2007 c 238 § 1.]

16.30.010 Definitions. (1) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(2) "Potentially dangerous wild animal" means one of the following types of animals, whether bred in the wild or in captivity, and any or all hybrids thereof:

- (a) Class mammalia
 - (i) Order carnivora
 - (A) Family felidae, only lions, tigers, captive-bred cougars, jaguars, cheetahs, leopards, snow leopards, and clouded leopards;
 - (B) Family canidae, wolves, excluding wolf-hybrids;
 - (C) Family ursidae, all bears;
 - (D) Family hyaenidae, such as hyenas;
 - (ii) Order perissodactyla, only rhinoceroses;
 - (iii) Order primates, all nonhuman primate species;
 - (iv) Order proboscidae, all elephants [elephant] species;
 - (b) Class reptilia
 - (i) Order squamata
 - (A) Family atractaspidae, all species;
 - (B) Family colubridae, only dispholidus typus;
 - (C) Family elapidae, all species, such as cobras, mambas, kraits, coral snakes, and Australian tiger snakes;
 - (D) Family hydrophiidae, all species, such as sea snakes;
 - (E) Family varanidae, only water monitors and crocodile monitors;
 - (F) Family viperidae, all species, such as rattlesnakes, cottonmouths, bushmasters, puff adders, and gaboon vipers;
 - (ii) Order crocodilia, all species, such as crocodiles, alligators, caimans, and gavials.
- (3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member,

shareholder, director, employee, agent, or representative thereof.

(4) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the state, or has custody or control of a potentially dangerous wild animal.

(5) "Wildlife sanctuary" means a nonprofit organization, as described in RCW 84.36.800, that cares for animals defined as potentially dangerous and:

(a) No activity that is not inherent to the animal's nature, natural conduct, or the animal in its natural habitat is conducted;

(b) No commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal by-products, or animal offspring, or the sale of photographic opportunities involving an animal, or the use of an animal for any type of entertainment purpose;

(c) No unescorted public visitations or direct contact between the public and an animal; or

(d) No breeding of animals occurs in the facility. [2007 c 238 § 2.]

16.30.020 Exceptions. (1) The provisions of this chapter do not apply to:

(a) Institutions authorized by the Washington department of fish and wildlife to hold, possess, and propagate deleterious exotic wildlife pursuant to RCW 77.12.047;

(b) Institutions accredited or certified by the American zoo and aquarium association or a facility with a current signed memorandum of participation with an association of zoos and aquariums species survival plan;

(c) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing an animal at the written request of the animal control authority or acting under the authority of this chapter;

(d) Animal control authority, law enforcement officers, or county sheriffs acting under the authority of this chapter;

(e) Veterinary hospitals or clinics;

(f) A holder of a valid wildlife rehabilitation permit issued by the Washington department of fish and wildlife;

(g) Any wildlife sanctuary as defined under RCW 16.30.010(5);

(h) A research facility as defined by the animal welfare act, 7 U.S.C.A. 2131, as amended, for the species of animals for which they are registered. This includes but is not limited to universities, colleges, and laboratories holding a valid class R license under the animal welfare act;

(i) Circuses, defined as incorporated, class C licensees under the animal welfare act, 7 U.S.C.A. 2131, as amended, that are temporarily in this state, and that offer performances by live animals, clowns, and acrobats for public entertainment;

(j) A person temporarily transporting and displaying a potentially dangerous wild animal through the state if the transit time is not more than twenty-one days and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping;

(k) Domesticated animals subject to this title or native wildlife subject to Title 77 RCW;

(l) A person displaying animals at a fair approved by the Washington department of agriculture pursuant to chapter 15.76 or 36.37 RCW; and

(m) A game farm meeting the requirements of WAC 232-12-027(1).

(2) This chapter does not require a city or county that does not have an animal control authority to create that office. [2007 c 238 § 3.]

16.30.030 Prohibited behavior. (1) A person shall not own, possess, keep, harbor, bring into the state, or have custody or control of a potentially dangerous wild animal, except as provided in subsection (3) of this section.

(2) A person shall not breed a potentially dangerous wild animal.

(3) A person in legal possession of a potentially dangerous wild animal prior to July 22, 2007, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life. The person must maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to July 22, 2007, and present the paperwork to an animal control or law enforcement authority upon request. The person shall have the burden of proving that he or she possessed the animal prior to July 22, 2007. [2007 c 238 § 4.]

16.30.040 Confiscation—Duties of animal control authority or law enforcement officer. (1) The animal control authority or a law enforcement officer may immediately confiscate a potentially dangerous wild animal if:

(a) The animal control authority or law enforcement officer has probable cause to believe that the animal was acquired after July 22, 2007, in violation of RCW 16.30.030;

(b) The animal poses a public safety or health risk;

(c) The animal is in poor health and condition as a result of the possessor; or

(d) The animal is being held in contravention of the [this] act.

(2) A potentially dangerous wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or law enforcement officer establishes that the possessor had possession of the animal prior to July 22, 2007, and the return does not pose a public safety or health risk.

(3) The animal control authority or law enforcement officer shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation, and that the possessor must meet the requirements of subsection (2) of this section in order for the animal to be returned to the possessor.

(4) If a potentially dangerous wild animal confiscated under this section is not returned to the possessor, the animal control authority or law enforcement officer may release the animal to a facility such as a wildlife sanctuary or a facility exempted pursuant to RCW 16.30.020. If the animal control authority or law enforcement officer is unable to relocate the animal within a reasonable period of time, it may euthanize the animal.

(5) An animal control authority or law enforcement officer may euthanize a potentially dangerous wild animal under this section only if all known reasonable placement

options, including relocation to a wildlife sanctuary, are unavailable.

(6) This section applies to animal confiscations on or after July 22, 2007. [2007 c 238 § 5.]

16.30.050 City or county ordinances. A city or county may adopt an ordinance governing potentially dangerous wild animals that is more restrictive than this chapter. However, nothing in this chapter requires a city or county to adopt an ordinance to be in compliance with this chapter. [2007 c 238 § 6.]

16.30.060 Violations—Civil penalty. A person who violates RCW 16.30.030 is liable for a civil penalty of not less than two hundred dollars and not more than two thousand dollars for each animal with respect to which there is a violation and for each day the violation continues. [2007 c 238 § 7.]

16.30.070 Enforcement of provisions. (1) The animal control authority and its staff and agents, local law enforcement agents, and county sheriffs are authorized and empowered to enforce the provisions of this chapter.

(2) If a locality does not have a local animal control authority, the department of fish and wildlife shall enforce the provisions of this chapter. [2007 c 238 § 8.]

16.30.900 Severability—2007 c 238. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 238 § 9.]

Chapter 16.36 RCW

ANIMAL HEALTH

(Formerly: Diseases—Quarantine—Garbage feeding)

Sections

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- 16.36.150 Animal disease traceability activities for cattle—Fee—Penalty.
- 16.36.160 Activity report and financial statement—Animal disease traceability activities.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.36.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010, except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

(2) "Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

(3) "Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official electronic or paper form from the state of origin or from the animal and plant health inspection service (APHIS) of the United States department of agriculture, executed by a licensed and accredited veterinarian or a veterinarian approved by the animal and plant health inspection service. "Certificate of veterinary inspection" is also known as an "official health certificate."

(4) "Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

(5) "Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

(6) "Department" means the department of agriculture of the state of Washington.

(7) "Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

(8) "Director" means the director of the department or his or her authorized representative.

(9) "Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 77.115 RCW.

(10) "Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

(11) "Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

(12) "Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

(13) "Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

(14) "Infectious disease" means a clinical disease of humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

(15) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

(16) "Meat processors" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.).

(17) "Person" means a person, persons, firm, or corporation.

(18) "Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

(19) "Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

(20) "Sold" means sale, trade, gift, barter, or any other action that constitutes a change of ownership.

(21) "Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals. [2011 c 204 § 6. Prior: 2010 c 66 § 1; 2003 c 39 § 9; 1998 c 8 § 1; 1987 c 163 § 1; 1953 c 17 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

16.36.010 Quarantine—Hold order. (1) The director shall supervise the prevention of the spread and the suppression

sion of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state.

(2) The director may issue a quarantine order and enforce the quarantine of any animal or its reproductive products when any animal or its reproductive products are affected with or have been exposed to disease or when there is reasonable cause to investigate whether any animal or its reproductive products are affected with or have been exposed to disease, either within or outside the state. Overt disease or exposure to disease in any animal or its reproductive products need not be immediately obvious for a quarantine order to be issued or enforced. The quarantine shall remain in effect as long as the director deems necessary.

(3) The director may issue a hold order when:

(a) Overt disease or exposure to disease in an animal is not immediately obvious but there is reasonable cause to investigate whether an animal is diseased or has been exposed to disease;

(b) Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or

(c) Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.

A hold order is in effect for fourteen days and expires when released by the director or no later than midnight on the fourteenth day from the date of the hold order. A hold order may be replaced with a quarantine order for the purpose of animal disease control.

(4) Any animal or animal reproductive product placed under a quarantine or hold order shall be kept separate and apart from other animals designated in the instructions of the quarantine or hold order, and shall not be allowed to have anything in common with other animals.

(5) The expenses of handling and caring for any animal or animal reproductive product placed under a quarantine or hold order are the responsibility of the owner.

(6) The director has authority over the quarantine or hold area until the quarantine or hold order is released or the hold order expires.

(7) Any animal or animal reproductive product placed under a quarantine or hold order may not be moved, transported, or sold without written approval from the director or until the quarantine or hold order is released, or the hold order expires.

(8) The director may administer oaths and examine witnesses and records in the performance of his or her duties to control diseases affecting animals. [2007 c 71 § 5; 2004 c 251 § 1; 1998 c 8 § 2; 1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

16.36.020 Powers of director. (1) The director shall enforce and administer the provisions of this chapter pertaining to garbage feeding.

(2) The director has the authority to regulate the sale, distribution, and use of veterinary biologics in the state and may adopt rules to restrict the sale, distribution, or use of any veterinary biologic in any manner necessary to protect the health and safety of the public and the state's animal population.

(3) The director has the authority to license and regulate the activities of veterinary laboratories that do not have a veterinarian licensed under chapter 18.92 RCW present within the management or staff of the veterinary laboratory. The director may adopt rules to regulate these laboratories in any manner necessary to protect the health and safety of the public and the public's animals. [1998 c 8 § 3; 1987 c 163 § 2; 1979 c 154 § 8; 1953 c 17 § 2; 1947 c 172 § 1; 1933 c 177 § 1; 1927 c 165 § 1; formerly Rem. Supp. 1947 § 3110. Prior: 1915 c 100 § 5; 1901 c 112 § 2; 1895 c 167 § 2.]

Additional notes found at www.leg.wa.gov

16.36.023 Fees—Rules. (1) The director may adopt rules establishing fees for:

(a) The establishment and inspection of animal holding facilities authorized under this chapter;

(b) The inspection and monitoring of animals in authorized animal holding facilities; and

(c) Special inspections of animals or animal facilities that the director may provide at the request of the animal owner or interested persons.

(2) The fees shall, as closely as practicable, cover the cost of the service provided.

(3) All fees collected under this section shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2008 c 285 § 28.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

16.36.025 Recovery of costs. The director may collect moneys to recover the reasonable costs of purchasing, printing, and distributing official individual identification devices or methods, regulatory forms, and other supplies. All funds received under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to cover the costs associated with this chapter. [2011 c 204 § 1; 1998 c 8 § 19.]

16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations. (1) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this chapter, and including:

(a) Preventing the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting animals in this state;

(b) Governing the inspection and testing of all animals within or about to be imported into this state;

(c) Designating any disease as a reportable disease; and

(d) Designating when a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law or rule must designate a destination with a physical address for animals entering Washington and when those animals must be delivered or transported directly to the physical address of that destination.

(2) Rules to prevent the introduction or spread of infectious, contagious, communicable, or dangerous diseases affecting animals in this state may differ from federal regulations by being more restrictive. [2011 c 204 § 8; 1998 c 8 § 4; 1979 c 154 § 10; 1947 c 172 § 3; 1927 c 165 § 4; Rem. Supp. 1947 § 3113. Prior: 1915 c 100 § 4; 1901 c 112 § 2; 1895 c 167 § 2.]

Additional notes found at www.leg.wa.gov

16.36.045 Transporting of animals—Requirements—Vehicle inspection—Authorization by director or appointed officers. The director may establish points of inspection for vehicles transporting animals on the public roads of this state to determine if the animals being transported are accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules. Vehicles transporting animals on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director, with emphasis on livestock being brought in from outside the state. The director or appointed officers are authorized to stop a vehicle transporting animals upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe the animals are being transported in violation of this chapter or its rules. [2007 c 71 § 1.]

16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct. (1) It is unlawful for a person to bring an animal into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal meets the Washington state animal health requirements. This subsection does not apply to:

(a) Those animals that qualify for an exemption in RCW 16.36.140; or

(b) Other animals exempted by the director by rule.

(2) For animals imported into Washington it is unlawful for a person to transport or deliver an animal to any physical address other than the physical address of the destination designated by a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law or rule. The director may exempt animals from this requirement by rule.

(3) It is unlawful for a person to intentionally falsely make, complete, alter, use, or sign a certificate of veterinary inspection or official animal health document of the department.

(4) It is unlawful for a person to intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device.

(5) It is unlawful for a person to willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties.

(6) It is unlawful for a person to willfully fail to comply with or to violate any rule or order adopted by the director under this chapter. [2011 c 204 § 9; 2010 c 66 § 2; 2007 c 71 § 2; 1998 c 8 § 5; 1979 c 154 § 11; 1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

Additional notes found at www.leg.wa.gov

16.36.060 Tests, examinations, inspections, samples, examine and copy records—Entry onto property—Unlawful conduct—Seizure of property—Search warrant. (1) The director has the authority to enter a property at any reasonable time to:

(a) Conduct tests, examinations, or inspections to take samples, and to examine and copy records when there is reasonable cause to investigate whether animals on the property or that have been on the property are infected with or have been exposed to disease; and

(b) Determine, when there is reasonable cause to investigate, whether animals on the property have been imported into Washington state in violation of requirements of this chapter, and to conduct tests, examinations, and inspections, take samples, and examine and copy records during such investigations.

(2) It is unlawful for any person to interfere with investigations, tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with tests, inspections, or examinations conducted pursuant to subsection (1) of this section.

(3) If the director is denied access to a property or animals for purposes of this chapter, or a person fails to comply with an order of the director, the director may apply to a court of competent jurisdiction for a search warrant. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or owner's agent and secure consent. The court may issue a search warrant authorizing access to any animal or property at reasonable times to conduct investigations, tests, inspections, or examinations of any animal or property, or to take samples, and examine and copy records, and may authorize seizure or destruction of property. [2011 c 204 § 10; 2010 c 66 § 4; 2004 c 251 § 2; 1998 c 8 § 6; 1985 c 415 § 2; 1979 c 154 § 12; 1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

Additional notes found at www.leg.wa.gov

16.36.070 Danger of infection—Emergencies. When any local governing body notifies the director of the presence or probable danger of infection from any animal diseases, the director, state veterinarian, or a deputized state veterinarian shall respond immediately and take appropriate action. In case of an emergency, the director may appoint deputies or assistants with equal power to act. [1998 c 8 § 7; 1947 c 172 § 6; 1927 c 165 § 7; Rem. Supp. 1947 § 3116. Prior: 1895 c 167 § 4.]

16.36.080 Veterinarians and others to report diseases—Director's duties—Unlawful importation. (1) Any person licensed to practice veterinary medicine, surgery, and dentistry in this state, veterinary laboratories, and others designated by this chapter shall immediately report in writing or by telephone, facsimile, or electronic mail to the director the existence or suspected existence of any reportable disease among animals within the state.

(2) Persons using their own diagnostic services must report any reportable disease among animals within the state to the director.

(3) The director shall investigate and/or maintain records of all cases of reportable diseases among animals within this state.

(4) The director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner

may dispose of the animal rather than treating the animal as required by the director.

(5) It is unlawful for any person to import any animal infected with or exposed to a reportable disease without a permit from the director. [1998 c 8 § 8; 1947 c 172 § 7; 1927 c 165 § 8; Rem. Supp. 1947 § 3117.]

16.36.082 Infected or exposed animals—Unlawful to transfer or expose other animals. (1) It is unlawful for any person to sell, exchange, or give away any animal that he or she knows:

(a) Is infected with any contagious, infectious, or communicable disease;

(b) Has been exposed to any contagious, communicable, or infectious disease within the previous thirty days; or

(c) Has been treated for any condition within the previous thirty days; without notifying the purchaser or person taking possession of the animal of the infection, exposure, or treatment unless the legal withdrawal period for any treatment has been met or exceeded.

(2) It is unlawful for any owner or person in possession of any animal having any contagious, communicable, or infectious disease to knowingly:

(a) Turn out the animal onto enclosed lands adjoining the enclosed lands of another that are kept for pasture or otherwise used for raising animals without notifying the owner of the enclosed lands; or

(b) Stable the animal or allow the animal to be stabled in any barn with other animals without notifying the other owners. [1998 c 8 § 14; 1927 c 165 § 26; RRS § 3135. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.130.]

16.36.084 Duty to report infection or exposure to disease—Unlawful conduct. Any person owning or having in his or her control any livestock which become infected with scrapie or another transmissible spongiform encephalopathy (TSE) or which have been exposed to such disease, shall immediately report the disease or exposure to the director. It is unlawful for any person to fail to report or to attempt to conceal the existence of any such disease. [1998 c 8 § 15; 1927 c 165 § 28; RRS § 3137. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.140.]

16.36.086 Negligence of owner of infected livestock—Liability. When any livestock affected with any contagious, infectious, or communicable disease mingle with any healthy livestock belonging to another person, through the fault or negligence of the owner of the diseased livestock or his or her agent, the owner is liable for all damages sustained by the owner of the healthy livestock. [1998 c 8 § 16; 1927 c 165 § 32; RRS § 3141. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.160.]

16.36.090 Destruction of diseased or quarantined animals. When public welfare demands, the director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. The director may order destruction of any

animal held under quarantine when public welfare demands or the owner of the animal fails or refuses to follow a herd or flock plan. The director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian. [2004 c 251 § 3; 1998 c 8 § 9; 1985 c 415 § 3; 1979 c 154 § 13; 1947 c 172 § 8; 1927 c 165 § 9; Rem. Supp. 1947 § 3118. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

Additional notes found at www.leg.wa.gov

16.36.096 Destruction of animals—Payment of indemnity. In ordering the slaughter or destruction of any animal, the director may pay an indemnity in an amount not to exceed seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed. The actual indemnity amount shall be established by the director by rule. Payment of indemnity does not apply to an animal: (1) Belonging to the federal government or any of its agencies, this state or any of its agencies, or any municipal corporation; or (2) that has been brought into this state in violation of this chapter or rules adopted under this chapter. [1998 c 8 § 10; 1985 c 415 § 4; 1963 ex.s. c 8 § 1.]

16.36.098 Quarantine, hold order, or destruct order—Written request for hearing. Any person whose animal or animal reproductive products are placed under a quarantine, a hold order, or destruct order under RCW 16.36.090 may request a hearing. The request for a hearing must be in writing and filed with the director. Any hearing will be held in conformance with RCW 34.05.422 and 34.05.479. [2004 c 251 § 4; 1998 c 8 § 17.]

16.36.100 Cooperation with other governmental agencies. The director is authorized to cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter and to promote consistency of regulation. [1998 c 8 § 11; 1927 c 165 § 10; RRS § 3119. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

16.36.102 Duty to bury carcass of diseased livestock—Dead livestock presumed diseased. Every person owning or having in charge any livestock that has died because of disease shall dispose of the carcass within a time frame and in a manner prescribed in rule by the director, which may include, but is not limited to, burial, composting, incinerating, landfilling, natural decomposition, or rendering. Any livestock found dead from an unknown cause is presumed to have died because of disease. [2006 c 155 § 1; 1949 c 100 § 2; Rem. Supp. 1949 § 3142-2. Formerly RCW 16.36.092, 16.68.020.]

16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection. No person shall feed garbage to swine without first obtaining a license from the director. The license expires on June 30th of each year. Application for a license shall be accompanied by a fee of ten dollars which shall be credited to the general fund. The license is nontransferable and a separate license is required for each place of business if an operator has more than one feeding station.

Upon receipt of an application for a license to feed garbage, the director shall inspect the premises and determine whether the applicant meets the requirements of 9 C.F.R. Chapter 1 Part 166 as adopted by rule and any other rules adopted under this chapter. Upon approval of the application by the director and compliance with the provisions of this section, the applicant shall be issued a license. This section does not apply to any person feeding garbage from his or her own domestic household. [1998 c 8 § 12; 1953 c 17 § 4.]

Feeding of carcasses to swine: RCW 16.68.150.

16.36.110 Violations, gross misdemeanor—Injunction—Denial, revocation, or suspension of license. (1) Any person who violates any provision of this chapter or the rules adopted under this chapter shall be guilty of a gross misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

(2) The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court of Thurston county or of the county in which such violation occurs notwithstanding the existence of other remedies at law.

(3) The director may deny, revoke, or suspend any license issued under this chapter for any failure or refusal to comply with this chapter or rules adopted under this chapter. Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW. [1998 c 8 § 13; 1989 c 354 § 35; 1981 c 296 § 14; 1957 c 22 § 5. Prior: 1953 c 17 § 8; 1927 c 165 § 33; RRS § 3142.]

Additional notes found at www.leg.wa.gov

16.36.113 Violations of chapter or rules—Civil penalty—Moneys collected—Time and mileage fee. (1) Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. Moneys collected under this section must be deposited in the state general fund.

(2) The department may charge a time and mileage fee for the cost of an investigation including inspecting animals and related records during an investigation of a proven violation of this chapter. The fee may be up to eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2011 c 204 § 11; 2007 c 71 § 4.]

16.36.116 Civil infraction—Live nonambulatory livestock—Monetary penalty—Authorization by director—Issuance of notices—Enforcement. (1) Any person found transporting animals on the public roads of this state that are not accompanied by valid health certificates, permits,

or other documents as required by this chapter or its rules has committed a class 1 civil infraction.

(2) Any person who knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock has committed a civil infraction and shall be assessed a monetary penalty not to exceed one thousand dollars. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation. Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot. For the purposes of this section, "nonambulatory livestock" has the same meaning as in RCW 16.52.225.

(3) The director is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW. [2009 c 347 § 1; 2007 c 71 § 3.]

16.36.128 Application of Title 77 RCW. Certain animals defined in this chapter as livestock or animal may also meet the definition of wildlife contained in Title 77 RCW. This chapter does not allow importation, possession, or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title, nor does it relieve the owners or possessors of wildlife from full compliance with the requirements of Title 77 RCW or the rules adopted under that title. Rules adopted by the director shall not allow importation, possession, or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title. [1998 c 8 § 18.]

16.36.140 Bringing an animal into the state—Securing a certificate of veterinary inspection required—Exemptions—Director's authority—Rules. (1) It is unlawful for a person to bring an animal into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal meets Washington state animal health requirements. This subsection does not apply to animals that:

- (a) Have been exempted by the director by rule; or
- (b) Will be delivered within twelve hours after entry into

Washington state to:

- (i) An approved, inspected feed lot for slaughter;
- (ii) A federally inspected slaughter plant; or
- (iii) A licensed public livestock market for sale and subsequent delivery within twelve hours to:

- (A) An approved, inspected feed lot for slaughter; or
- (B) A federally inspected slaughter plant.

(2) The director may monitor animals entering Washington state. Persons importing, transporting, receiving, feeding, or housing imported animals shall:

- (a) Comply with the requirement and any exemptions specified in subsection (1) of this section; and
- (b) Make the animal and related records available for inspection by the director.

(3) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this section. [2011 c 204 § 12; 2010 c 66 § 3.]

16.36.150 Animal disease traceability activities for cattle—Fee—Penalty. (1) The director shall adopt by rule a fee per head on cattle sold or slaughtered in the state or transported out of the state to administer animal disease traceability activities for cattle. The fee must be paid by:

- (a) Sellers of cattle sold in the state, without exception;
 - (b) Owners of cattle that are transported out of Washington, unless an exception is provided by rule; and
 - (c) Owners of cattle slaughtered in the state.
- (2) The fee adopted by the department may not exceed forty cents per head of cattle.

(3)(a) Except where the seller presents proof that the fee has been paid by a meat processor under (c) of this subsection, the fee required in this section must be paid by the owner of cattle receiving a livestock inspection issued by the department under chapter 16.57 RCW in the same manner as livestock inspection fees are collected under RCW 16.57.220.

(b) The fee required in this section must be paid from the owner of cattle not receiving a livestock inspection issued by the department under chapter 16.57 RCW by the fifteenth day of the month following the month the sale or transportation out-of-state occurred, or at a different time as designated by rule.

(c) When cattle are slaughtered, the fee required by this section must be collected from the seller of the cattle by the meat processor. The meat processor must transmit the fee to the department by the fifteenth day of the month following the month the transaction occurred, or at a different time as designated by rule. When cattle owned by a meat processor are slaughtered, the fee must be paid by the meat processor.

(4) All fees received by the department under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to carry out animal disease traceability activities for cattle and to compensate the livestock identification program for data and fee collection.

(5) Any person failing to pay the fee established in this section has committed a class 1 civil infraction punishable as provided in RCW 7.80.120. Each violation is a separate and distinct offense. [2011 c 204 § 2.]

16.36.160 Activity report and financial statement—Animal disease traceability activities. By December 1st of each year, the department shall submit an activity report and financial statement on the implementation of the animal disease traceability activities to the animal disease traceability advisory committee created in *section 5 of this act. [2011 c 204 § 3.]

*Reviser’s note: Section 5, chapter 204, Laws of 2011 was vetoed by the governor.

**Chapter 16.38 RCW
LIVESTOCK DISEASES—
DIAGNOSTIC SERVICE PROGRAM**

Sections

- 16.38.010 Declaration of purpose.
- 16.38.020 Director authorized to carry on diagnostic program.
- 16.38.030 Employment of personnel.
- 16.38.040 Agreements and/or contracts with other entities.
- 16.38.050 Acceptance of gifts, funds, equipment, etc.

16.38.060 Schedule of fees may be established—Use.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.38.010 Declaration of purpose. The production of livestock is one of the largest industries in this state; and whereas livestock disease constitutes a constant threat to the public health and the production of livestock in this state; and whereas the prevention and control of such livestock diseases by the state may be best carried on by the establishment of a diagnostic service program for livestock diseases; therefore it is in the public interest and for the purpose of protecting health and general welfare that a livestock diagnostic service program be established. [1969 c 100 § 1.]

16.38.020 Director authorized to carry on diagnostic program. The director of agriculture is hereby authorized to carry on a diagnostic service program for the purpose of diagnosing any livestock disease which affects or may affect any livestock which is or may be produced in this state or otherwise handled in any manner for public distribution or consumption. [1969 c 100 § 2.]

16.38.030 Employment of personnel. In carrying out such diagnostic service program the director of agriculture may employ, subject to the state civil service act, chapter 41.06 RCW, the necessary personnel to properly effectuate such diagnostic service program. [1969 c 100 § 3.]

16.38.040 Agreements and/or contracts with other entities. In carrying out such diagnostic service program the director of agriculture may enter into agreements and/or contracts with any other governmental agencies whether state or federal or public institution such as Washington State University or private institutions and/or research organizations. [1969 c 100 § 4.]

16.38.050 Acceptance of gifts, funds, equipment, etc. In carrying out such diagnostic service program, the director of agriculture may accept public or private funds, gifts or equipment or any other necessary properties. [1969 c 100 § 5.]

16.38.060 Schedule of fees may be established—Use. The director may, following a public hearing, establish a schedule of fees for services performed in carrying out such diagnostic service program. All fees collected under this provision shall be retained by the director of agriculture to be spent only for carrying out the purposes of this chapter. [1986 c 203 § 6; 1969 c 100 § 6.]

Additional notes found at www.leg.wa.gov

**Chapter 16.49 RCW
CUSTOM SLAUGHTERING**

Sections

- 16.49.005 Intent.
- 16.49.008 Application.
- 16.49.015 Definitions.
- 16.49.025 Rules.
- 16.49.035 Custom slaughtering and custom meat licenses—Generally.
- 16.49.045 Inspections.

- 16.49.055 Custom meat facilities—Conditions for preparation of inspected and uninspected meat.
- 16.49.065 Licensed custom farm slaughterer—Transport of offal.
- 16.49.075 Unlawful acts—Selling, trading, or giving away uninspected meat or meat products—Interfering with director’s duties.
- 16.49.085 Violations of chapter or rules—Investigation by director—Subpoenas.
- 16.49.095 Denial, suspension, revocation of license—Grounds—Request for hearing.
- 16.49.105 Noncompliance with chapter or rules—Civil penalty.
- 16.49.115 Application of administrative procedure act.
- 16.49.125 Custom meat facilities—Sale of inspected meat—Ordinances may be more restrictive.

16.49.005 Intent. This chapter is intended to safeguard the household user of uninspected and inspected meat products from possible harm due to adulterated, misbranded, or unfit meat or meat products or meat or meat products that have been prepared under insanitary conditions. [2000 c 99 § 1.]

16.49.008 Application. (1) This chapter does not apply to the slaughter and preparation of one thousand or fewer pastured chickens in a calendar year by the agricultural producer of the chickens for the sale of whole raw chickens by the producer directly to the ultimate consumer at the producer’s farm.

(2) For the purposes of this section, "chicken" means the species *Gallus domesticus*. [2003 c 397 § 1.]

16.49.015 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director’s designee.

(3) "Custom farm slaughterer" means a person licensed to slaughter meat food animals for the owner of the animal through the use of a mobile unit.

(4) "Custom slaughtering establishment" means the facility operated by a person licensed to slaughter meat food animals for the owner of the animal at a fixed location.

(5) "Custom meat facility" means the facility operated by a person licensed to prepare uninspected meat for the owner of the uninspected meat. Operators of custom meat facilities may also sell prepackaged inspected meat to any person. This chapter does not prohibit the operator of a custom meat facility from being licensed to prepare at the facility and sell inspected meat to any person.

(6) "Inspected meat" means the carcasses or carcass parts of meat food animals which have been slaughtered and inspected at establishments subject to inspection under a federal meat inspection act.

(7) "Uninspected meat" means the carcasses or carcass parts of meat food animals that have been slaughtered by the owner of the animals, a custom farm slaughterer, or at a custom slaughtering establishment.

(8) "Household user" means the ultimate consumer, members of the consumer’s household, and his or her non-paying guests and employees.

(9) "Person" means any individual, partnership, association, and corporation.

(10) "Meat food animal" means cattle, swine, sheep, or goats.

(11) "Meat food bird" means a ratite, such as an ostrich, emu, or rhea.

(12) "Official establishment" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal meat inspection act.

(13) "Prepared" means smoked, salted, rendered, boned, cut up, or otherwise processed. [2000 c 99 § 2; 1999 c 291 § 28; 1987 c 77 § 4. Formerly RCW 16.49.435.]

Additional notes found at www.leg.wa.gov

16.49.025 Rules. The director shall enforce and carry out the provisions of this chapter and adopt rules necessary to carry out its purpose. The rules may include, but are not limited to:

(1) Requirements for construction, equipment, cleaning, sanitation, and sanitary practices to ensure sanitary operations;

(2) Requirements for identification or tagging of meat food animals slaughtered by licensees to maintain identification of the owner of the animal;

(3) Requirements for handling and storing inspected and uninspected meats and meat products;

(4) Requirements for labeling meat and meat products; and

(5) Requirements for slaughtering and processing of meat food birds by licensees. [2000 c 99 § 3; 1987 c 77 § 5. Formerly RCW 16.49.680.]

Additional notes found at www.leg.wa.gov

16.49.035 Custom slaughtering and custom meat licenses—Generally. (1) It is unlawful for any person to operate as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility in the state without first obtaining a license from the director. Custom farm slaughterers must obtain a separate license for each mobile unit. Separate licenses are required for each custom slaughtering establishment and custom meat facility.

(2) Application for a license must be made on a form prescribed by the director and accompanied by a twenty-five dollar license fee. The application must include:

(a) The full name and address of the applicant. If the applicant is a partnership or corporation, the application must include the full name and address of each partner or officer;

(b) The physical location address of each establishment or facility to be licensed;

(c) The name and address of a resident of this state authorized to accept legal notices for the applicant; and

(d) Any other information prescribed by the director.

(3) If an application for renewal of a license and the license fee are not received by June 30th, the applicant must pay an additional fee of twenty-five dollars before the renewal license is issued.

(4) Initial issuance of a license requires a prelicense inspection by the director for compliance with this chapter and rules adopted under this chapter. A license shall only be issued after an applicant is found to be in substantial compliance with this chapter and rules adopted under this chapter.

(5) Licenses issued under this chapter expire June 30th of each year.

(6) Licenses issued under this chapter are not transferrable. [2000 c 99 § 4; 1991 c 109 § 4; 1987 c 77 § 1; 1985 c 415 § 5; 1959 c 204 § 44. Formerly RCW 16.49.440.]

Additional notes found at www.leg.wa.gov

16.49.045 Inspections. To determine compliance with this chapter and the rules adopted under this chapter, the director may inspect the mobile unit of any custom farm slaughterer and the premises of any custom slaughtering establishment or custom meat facility at any reasonable time. [2000 c 99 § 5; 1987 c 77 § 8. Formerly RCW 16.49.690.]

Additional notes found at www.leg.wa.gov

16.49.055 Custom meat facilities—Conditions for preparation of inspected and uninspected meat. Inspected and uninspected meat may only be prepared by a custom meat facility under the following conditions:

(1) Inspected meat and meat products prepared from inspected meat must be kept separated from uninspected meat and meat products prepared from uninspected meat to prevent inspected meat from coming into contact with uninspected meat.

(2) Preparation of inspected meat and uninspected meat must be done at different times.

(3) Equipment used in preparing uninspected meat or products prepared from uninspected meat must be cleaned and sanitized before being used to prepare inspected meat.

(4) Uninspected meat may be prepared only for the use of the owner, who must be a household user.

(5) Uninspected meat and meat products prepared from uninspected meat must be clearly marked and labeled "not for sale".

(6) Packages of uninspected meat may not be stored in a retail counter. [2000 c 99 § 6; 1987 c 77 § 3; 1985 c 415 § 7; 1971 ex.s. c 98 § 3. Formerly RCW 16.49.610.]

Additional notes found at www.leg.wa.gov

16.49.065 Licensed custom farm slaughterer—Transport of offal. A licensed custom farm slaughterer may transport the offal of a meat food animal he or she has slaughtered for the owner, when it is transported as part of a slaughtering transaction and the offal is handled in a sanitary manner. [2000 c 99 § 7; 1967 ex.s. c 120 § 4. Formerly RCW 16.49.451.]

16.49.075 Unlawful acts—Selling, trading, or giving away uninspected meat or meat products—Interfering with director's duties. It is unlawful for any person to:

(1) Sell, trade, or give away uninspected meat or meat products; or

(2) Interfere with the director in the performance of his or her duties under this chapter or the rules adopted under this chapter. [2000 c 99 § 8; 1987 c 77 § 9. Formerly RCW 16.49.700.]

Additional notes found at www.leg.wa.gov

16.49.085 Violations of chapter or rules—Investigation by director—Subpoenas. The director may investigate any violation or possible violation of this chapter or any rule adopted under this chapter. To assist in such investigation, the director may issue subpoenas to compel the attendance of

witnesses or to compel production of records or documents anywhere in the state. [2000 c 99 § 9; 1987 c 77 § 10. Formerly RCW 16.49.710.]

Additional notes found at www.leg.wa.gov

16.49.095 Denial, suspension, revocation of license—Grounds—Request for hearing. The director may deny, suspend, or revoke any license required under this chapter if the director determines that an applicant or licensee has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required under this chapter or rules adopted under this chapter to make the records available to the director on request;

(3) Refused the director access to any facilities or parts of the facilities for the purpose of carrying out the provisions of this chapter or rules adopted under this chapter; or

(4) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, intrastate commerce in food, drugs, and cosmetics, or rules adopted under that chapter.

Upon receipt of notice by the director to deny, suspend, or revoke a license, a person may request a hearing under chapter 34.05 RCW. [2000 c 99 § 10; 1994 c 128 § 1; 1985 c 415 § 12. Formerly RCW 16.49.444.]

16.49.105 Noncompliance with chapter or rules—Civil penalty. Any person who fails to comply with this chapter or the rules adopted under this chapter may be subject to a civil penalty in an amount of not more than one thousand dollars per violation per day. Each violation is a separate and distinct offense.

All moneys collected for civil penalties under this chapter shall be deposited in the state general fund. [2000 c 99 § 11; 1994 c 128 § 2; 1985 c 415 § 6; 1959 c 204 § 51. Formerly RCW 16.49.510.]

16.49.115 Application of administrative procedure act. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial. [2000 c 99 § 12.]

16.49.125 Custom meat facilities—Sale of inspected meat—Ordinances may be more restrictive. The provisions of this chapter relating to the sale of inspected meat in custom meat facilities do not supersede or restrict the authority of any county or any city to adopt ordinances that are more restrictive for the handling and sale of inspected meat than those provided in this chapter. [2000 c 99 § 13; 1999 c 291 § 29; 1987 c 77 § 11; 1971 ex.s. c 98 § 9. Formerly RCW 16.49.670.]

Additional notes found at www.leg.wa.gov

Chapter 16.50 RCW
HUMANE SLAUGHTER OF LIVESTOCK

Sections

16.50.100	Declaration of policy.
16.50.110	Definitions.
16.50.120	Humane methods for bleeding or slaughtering livestock required.
16.50.130	Administration of chapter—Rules.
16.50.140	Manually operated hammer, sledge or poleaxe—Declared inhumane.
16.50.150	Religious freedom—Ritual slaughter defined as humane.
16.50.160	Injunctions against violations.
16.50.170	Penalty for violations.
16.50.900	Severability—1967 c 31.

16.50.100 Declaration of policy. The legislature of the state of Washington finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economy in slaughtering operations; and produces other benefits for producers, processors and consumers which tend to expedite the orderly flow of livestock and their products. It is therefore declared to be the policy of the state of Washington to require that the slaughter of all livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those authorized by the Federal Humane Slaughter Act of 1958, and regulations thereunder. [1967 c 31 § 1.]

16.50.110 Definitions. For the purpose of this chapter: (1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Humane method" means either: (a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or (b) a method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules, and goats.

(5) "Packer" means any person engaged in the business of slaughtering livestock.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association and every officer, agent, or employee, thereof. This term shall import either the singular or plural, as the case may be.

(7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers. [2011 c 336 § 421; 1967 c 31 § 2.]

16.50.120 Humane methods for bleeding or slaughtering livestock required. No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: PROVIDED, That the director may, by administrative order, exempt a person from compliance with this chapter for a period of not to exceed six months if he or she finds that an

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earlier compliance would cause such person undue hardship. [2011 c 336 § 422; 1967 c 31 § 3.]

16.50.130 Administration of chapter—Rules. The director shall administer the provisions of this chapter. He or she shall adopt and may from time to time revise rules which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the federal humane slaughter act of 1958, Public Law 85-765, 72 Stat. 862 and any amendments thereto. Such rules shall be adopted pursuant to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules. [2011 c 336 § 423; 1967 c 31 § 4.]

16.50.140 Manually operated hammer, sledge or poleaxe—Declared inhumane. The use of a manually operated hammer, sledge or poleaxe is declared to be an inhumane method of slaughter within the meaning of this chapter. [1967 c 31 § 5.]

16.50.150 Religious freedom—Ritual slaughter defined as humane. Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provisions of this chapter, ritual slaughter and the handling or other preparation of livestock for ritual slaughter is defined as humane. [1967 c 31 § 10.]

16.50.160 Injunctions against violations. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of the other remedies at law. [1967 c 31 § 6.]

16.50.170 Penalty for violations. Any person violating any provision of this chapter or of any rule adopted hereunder is guilty of a misdemeanor and subject to a fine of not more than two hundred fifty dollars or confinement in the county jail for not more than ninety days. [1967 c 31 § 7.]

16.50.900 Severability—1967 c 31. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 31 § 9.]

Chapter 16.52 RCW
PREVENTION OF CRUELTY TO ANIMALS

Sections

16.52.011	Definitions—Principles of liability.
16.52.015	Enforcement—Law enforcement agencies and animal care and control agencies.
16.52.020	Humane societies—Enforcement authority.
16.52.025	Humane societies—Animal control officers.
16.52.080	Transporting or confining in unsafe manner—Penalty.
16.52.085	Removal of animals for feeding and care—Examination—Notice—Euthanasia.
16.52.090	Docking horses—Misdemeanor.
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16.52.110	Old or diseased animals at large.

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- 16.52.117 Animal fighting—Prohibited behavior—Class C felony—Exceptions.
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- 16.52.180 Limitations on application of chapter.
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- 16.52.190 Poisoning animals—Penalty.
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- 16.52.200 Sentences—Forfeiture of animals—Liability for costs—Penalty—Education, counseling.
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- 16.52.225 Nonambulatory livestock—Transporting or accepting delivery—Gross misdemeanor—Definition.
- 16.52.230 Remedies not impaired.
- 16.52.300 Dogs or cats used as bait—Seizure—Limitation.
- 16.52.305 Unlawful use of hook—Gross misdemeanor.
- 16.52.310 Dog breeding—Limit on the number of dogs—Required conditions—Penalty—Limitation of section—Definitions.
- 16.52.320 Maliciously killing or causing substantial bodily harm to livestock belonging to another—Penalty.

Cruelty to stock in transit: RCW 81.48.070.

Pet animals—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.52.011 Definitions—Principles of liability. (1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (g) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Food" means food or feed appropriate to the species for which it is intended.

(g) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

(h) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(i) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, and bison.

(j) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal.

(k) "Necessary water" means water that is in sufficient quantity and of appropriate quality for the species for which it is intended and that is accessible to the animal.

(l) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(m) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(n) "Similar animal" means: (i) For a mammal, another animal that is in the same taxonomic order; or (ii) for an animal that is not a mammal, another animal that is in the same taxonomic class.

(o) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110. [2011 c 172 § 1; 2011 c 67 § 3; 2009 c 287 § 1; 2007 c 376 § 2; 1994 c 261 § 2.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 67 § 3 and by 2011 c 172 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—1994 c 261: "The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level." [1994 c 261 § 1.]

16.52.015 Enforcement—Law enforcement agencies and animal care and control agencies. (1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter. Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for civil infractions and misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070 through 9.08.078 or 81.48.070;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control

officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or 81.48.070. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or RCW 9.08.070 or 81.48.070, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or 81.48.070, a law enforcement agency officer may arrest the alleged offender. [2011 c 172 § 2; 2003 c 53 § 110; 1994 c 261 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.020 Humane societies—Enforcement authority. Any citizens of the state of Washington incorporated under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may enforce the provisions of this chapter through its animal control officers subject to the limitations in RCW 16.52.015 and 16.52.025. The legislative authority in each county may grant exclusive authority to exercise the privileges and authority granted by this section to one or more qualified corporations for a period of up to three years based upon ability to fulfill the purposes of this chapter. [1994 c 261 § 4; 1973 1st ex.s. c 125 § 1; 1901 c 146 § 1; RRS § 3184.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.025 Humane societies—Animal control officers. Trustees of humane societies incorporated pursuant to RCW 16.52.020 may appoint society members to act as animal control officers. The trustee appointments shall be in writing. The appointment shall be effective in a particular county only if an appointee obtains written authorization from the superior court of the county in which the appointee seeks to enforce this chapter. To obtain judicial authorization, an appointee seeking judicial authorization on or after June 9, 1994, shall provide evidence satisfactory to the judge that the appointee has successfully completed training which has prepared the appointee to assume the powers granted to animal control officers pursuant to RCW 16.52.015. The trustees shall review appointments every three years and may revoke an appointment at any time by filing a certified revocation with the superior court that approved the appointment. Authorizations shall not exceed three years or trustee termination, whichever occurs first. To qualify for reappointment when a term expires on or after June 9, 1994, the officer shall obtain training or satisfy the court that the officer has sufficient experience to exercise the powers granted to animal

control officers pursuant to RCW 16.52.015. [1994 c 261 § 5.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.080 Transporting or confining in unsafe manner—Penalty. Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody or be subject to arrest pursuant to a valid warrant therefor by any officer or authorized person, such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty. [1982 c 114 § 5; 1974 ex.s. c 12 § 1; 1901 c 146 § 5; RRS § 3188. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part.]

Cruelty to stock in transit: RCW 81.48.070.

16.52.085 Removal of animals for feeding and care—Examination—Notice—Euthanasia. (1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has violated this chapter or a person owns, cares for, or resides with an animal in violation of an order issued under RCW 16.52.200(4) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject

to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning, caring for, or residing with a similar animal under RCW 16.52.200(4), the agency having custody of the animal may assume ownership upon seizure and the owner may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action. [2011 c 172 § 3; 2009 c 287 § 2; 1994 c 261 § 6; 1987 c 335 § 1; 1974 ex.s. c 12 § 2.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Additional notes found at www.leg.wa.gov

16.52.090 Docking horses—Misdemeanor. Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor. [1901 c 146 § 6; RRS § 3189. FORMER PART OF SECTION: Code 1881 § 840; 1871 p 103 § 1; RRS § 3206, now codified as RCW 16.52.095.]

16.52.095 Cutting ears—Misdemeanor. It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal such as an ox, cow, bull, calf, sheep, goat or hog, or dog, and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum less than twenty dollars. This section does not apply if cutting off more than one-half of the ear of the animal is a customary husbandry practice. [1994 c 261 § 7; Code 1881 § 840; 1871 p 103 § 1; RRS § 3206. Formerly RCW 16.52.090, part.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.100 Confinement without food and water—Intervention by others. If any domestic animal is

impounded or confined without necessary food and water for more than thirty-six consecutive hours, any person may, from time to time, as is necessary, enter into and open any pound or place of confinement in which any domestic animal is confined, and supply it with necessary food and water so long as it is confined. The person shall not be liable to action for the entry, and may collect from the animal's owner the reasonable cost of the food and water. The animal shall be subject to attachment for the costs and shall not be exempt from levy and sale upon execution issued upon a judgment. If an investigating officer finds it extremely difficult to supply confined animals with food and water, the officer may remove the animals to protective custody for that purpose. [1994 c 261 § 10; 1982 c 114 § 6; 1901 c 146 § 12; RRS § 3195.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.110 Old or diseased animals at large. Every owner, driver, or possessor of any old, maimed, or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: PROVIDED, That this shall not apply to any such owner keeping any old or diseased animal belonging to him or her on his or her own premises with proper care. Every sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal, which shall be abandoned on the public highway, or in any open or enclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment. [2011 c 336 § 424; 1901 c 146 § 13; RRS § 3196.]

16.52.117 Animal fighting—Prohibited behavior—Class C felony—Exceptions. (1) A person commits the crime of animal fighting if the person knowingly does any of the following:

(a) Owns, possesses, keeps, breeds, trains, buys, sells, or advertises or offers for sale any animal with the intent that the animal shall be engaged in an exhibition of fighting with another animal;

(b) Knowingly promotes, organizes, conducts, participates in, is a spectator of, advertises, prepares, or performs any service in the furtherance of, an exhibition of animal fighting, transports spectators to an animal fight, or provides or serves as a stakeholder for any money wagered on an animal fight at any place or building;

(c) Keeps or uses any place for the purpose of animal fighting, or manages or accepts payment of admission to any place kept or used for the purpose of animal fighting;

(d) Suffers or permits any place over which the person has possession or control to be occupied, kept, or used for the purpose of an exhibition of animal fighting; or

(e) Takes, leads away, possesses, confines, sells, transfers, or receives a stray animal or a pet animal, with the intent to deprive the owner of the pet animal, and with the intent of using the stray animal or pet animal for animal fighting, or for training or baiting for the purpose of animal fighting.

(2) A person who violates this section is guilty of a class C felony punishable under RCW 9A.20.021.

(3) Nothing in this section prohibits the following:

(a) The use of dogs in the management of livestock, as defined by chapter 16.57 RCW, by the owner of the livestock or the owner's employees or agents or other persons in lawful custody of the livestock;

(b) The use of dogs in hunting as permitted by law; or

(c) The training of animals or the use of equipment in the training of animals for any purpose not prohibited by law.

(4) For the purposes of this section, "animal" means dogs or male chickens. [2006 c 287 § 1; 2005 c 481 § 3; 1994 c 261 § 11; 1982 c 114 § 9.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.165 Punishment—Conviction of misdemeanor.

Every person convicted of any misdemeanor under RCW 16.52.080 or 16.52.090 shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution. [1982 c 114 § 7; 1901 c 146 § 16; RRS § 3199. Formerly RCW 16.52.160, part.]

16.52.180 Limitations on application of chapter. No part of this chapter shall be deemed to interfere with any of the laws of this state known as the "game laws," nor be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington or a research facility registered with the United States department of agriculture and regulated by 7 U.S.C. Sec. 2131 et seq. [1994 c 261 § 12; 1901 c 146 § 18; RRS § 3201.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.185 Exclusions from chapter. Nothing in this chapter applies to accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry, or products thereof or to the use of animals in the normal and usual course of rodeo events or to the customary use or exhibiting of animals in normal and usual events at fairs as defined in RCW 15.76.120. [1994 c 261 § 22; 1982 c 114 § 10.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.190 Poisoning animals—Penalty. (1) Except as provided in subsections (2) and (3) of this section, a person is guilty of the crime of poisoning animals if the person intentionally or knowingly poisons an animal under circumstances which do not constitute animal cruelty in the first degree.

(2) Subsection (1) of this section shall not apply to euthanizing by poison an animal in a lawful and humane manner by the animal's owner, or by a duly authorized servant or agent of the owner, or by a person acting pursuant to instructions from a duly constituted public authority.

(3) Subsection (1) of this section shall not apply to the reasonable use of rodent or pest poison, insecticides, fungi-

cides, or slug bait for their intended purposes. As used in this section, the term "rodent" includes but is not limited to Columbia ground squirrels, other ground squirrels, rats, mice, gophers, rabbits, and any other rodent designated as injurious to the agricultural interests of the state as provided in *chapter 17.16 RCW. The term "pest" as used in this section includes any pest as defined in RCW 17.21.020.

(4) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 111; 1994 c 261 § 13; 1941 c 105 § 1; RRS § 3207-1. Formerly RCW 16.52.150, part.]

***Reviser's note:** Chapter 17.16 RCW was repealed by 1994 c 11 § 1.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases.

(1) It is unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: PROVIDED, That nothing herein prohibits county, state, or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such registered pharmacist selling or furnishing such strychnine shall, before delivering the same, record the transaction as provided in RCW 69.38.030. If any such registered pharmacist suspects that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he or she may refuse to sell to such person, but whether or not he or she makes such sale, he or she shall if he or she so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 112; 1987 c 34 § 7; 1941 c 105 § 2; Rem. Supp. 1941 § 3207-2. Formerly RCW 18.67.110.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Penalty—Education, counseling.

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur.

(4) Any person convicted of animal cruelty shall be prohibited from owning, caring for, or residing with any similar animals for a period of time as follows:

(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;

(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;

(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection (5) of this section.

(5) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred, for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:

(a) The person's prior animal cruelty in the second degree convictions;

(b) The type of harm or violence inflicted upon the animals;

(c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions;

(d) Whether the person complied with the prohibition on owning, caring for, or residing with similar animals; and

(e) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.

The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.

(6) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

(7) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(8) If a person violates the prohibition on owning, caring for, or residing with similar animals under subsection (4) of this section, that person:

(a) Shall pay a civil penalty of one thousand dollars for the first violation;

(b) Shall pay a civil penalty of two thousand five hundred dollars for the second violation; and

(c) Is guilty of a gross misdemeanor for the third and each subsequent violation.

(9) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment. [2011 c 172 § 4; 2009 c 287 § 3; 2003 c 53 § 113; 1994 c 261 § 14; 1987 c 335 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Additional notes found at www.leg.wa.gov

16.52.205 Animal cruelty in the first degree. (1) A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) A person is guilty of animal cruelty in the first degree when, except as authorized by law, he or she, with criminal negligence, starves, dehydrates, or suffocates an animal and as a result causes: (a) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering; or (b) death.

(3) A person is guilty of animal cruelty in the first degree when he or she:

(a) Knowingly engages in any sexual conduct or sexual contact with an animal;

(b) Knowingly causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control;

(d) Knowingly engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose; or

(e) Knowingly photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal.

(4) Animal cruelty in the first degree is a class C felony.

(5) In addition to the penalty imposed in subsection (4) of this section, the court may order that the convicted person do any of the following:

(a) Not harbor or own animals or reside in any household where animals are present;

(b) Participate in appropriate counseling at the defendant's expense;

(c) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of any animals taken to the animal shelter or humane society as a result of conduct proscribed in subsection (3) of this section.

(6) Nothing in this section may be considered to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician.

(7) If the court has reasonable grounds to believe that a violation of this section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation.

(8) For purposes of this section:

(a) "Animal" means every creature, either alive or dead, other than a human being.

(b) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person.

(c) "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or arousal of the person.

(d) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording, sale, or transmission of the image. [2006 c 191 § 1; 2005 c 481 § 1; 1994 c 261 § 8.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.207 Animal cruelty in the second degree—Penalty. (1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(3) Animal cruelty in the second degree is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control. [2011 c 172 § 5; 2007 c 376 § 1; 2005 c 481 § 2; 1994 c 261 § 9.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.210 Destruction of animal by law enforcement officer—Immunity from liability. This chapter shall not limit the right of a law enforcement officer to destroy an animal that has been seriously injured and would otherwise continue to suffer. Such action shall be undertaken with reasonable prudence and, whenever possible, in consultation with a licensed veterinarian and the owner of the animal.

Law enforcement officers and licensed veterinarians shall be immune from civil and criminal liability for actions taken under this chapter if reasonable prudence is exercised

in carrying out the provisions of this chapter. [1987 c 335 § 3.]

Additional notes found at www.leg.wa.gov

16.52.220 Transfers of mammals for research—Certification requirements—Pet animals. (1) All transfers of mammals, other than rats and mice bred for use in research and livestock, to research institutions in this state, whether by sale or otherwise, shall conform with federal laws and, except as to those animals obtained from a source outside the United States, shall be accompanied by one of the following written certifications, dated and signed under penalty of perjury:

(a) Breeder certification: A written statement certifying that the person signing the certification is a United States department of agriculture-licensed class A dealer whose business license in the state of Washington includes only those animals that the dealer breeds and raises as a closed or stable colony and those animals that the dealer acquires for the sole purpose of maintaining or enhancing the dealer's breeding colony, that the animal being sold is one of those animals, and that the person signing the certification is authorized to do so. The certification shall also include an identifying number for the dealer, such as a business license number.

(b) True owner certification: A written statement certifying that the animal being transferred is owned by the person signing the certification, and that the person signing the certification either (i) has no personal knowledge or reason to believe that the animal is a pet animal, or (ii) consents to having the animal used for research at a research institution. The certification shall also state the date that the owner obtained the animal, and the person or other source from whom it was obtained. The certification shall also include an identifying number for the person signing the certification, such as a drivers' license number or business license number. The certifications signed by or on behalf of a humane society, animal control agency, or animal shelter need not contain a statement that the society, agency, or shelter owns the animal, but shall state that the animal has been in the possession of the society, agency, or shelter for the minimum period required by law that entitles it to legally dispose of the animal.

(2) In addition to the foregoing certification, all research institutions in this state shall open at the time a dog or cat is transferred to it a file that contains the following information for each dog or cat transferred to the institution:

(a) All information required by federal law;

(b) The certification required by this section; and

(c) A brief description of the dog or cat (e.g. breed, color, sex, any identifying characteristics), and a photograph of the dog or cat.

The brief description may be contained in the written certification.

These files shall be maintained and open for public inspection for a period of at least two years from the date of acquisition of the animal.

(3) All research institutions in this state shall, within one hundred eighty days of May 12, 1989, adopt and operate under written policies governing the acquisition of animals to be used in biomedical or product research at that institution. The written policies shall be binding on all employees, agents, or contractors of the institution. These policies must contain, at a minimum, the following provisions:

(a) Animals shall be acquired in accordance with the federal animal welfare act, public health service policy, and other applicable statutes and regulations;

(b) No research may be conducted on a pet animal without the written permission of the pet animal's owner;

(c) Any animal acquired by the institution that is determined to be a pet animal shall be returned to its legal owner, unless the institution has the owner's written permission to retain the animal; and

(d) A person at the institution shall be designated to have the responsibility for investigating any facts supporting the possibility that an animal in the institution's possession may be a pet animal, including any inquiries from citizens regarding their pets. This person shall devise and insure implementation of procedures to inform inquiring citizens of their right to prompt review of the relevant files required to be kept by the institution for animals obtained under subsection (2) of this section, and shall be responsible for facilitating the rapid return of any animal determined to be a pet animal to the legal owner who has not given the institution permission to have the animal or transferred ownership of it to the institution.

(4) For the purposes of this section, "research institution" means any facility licensed by the United States department of agriculture to use animals in biomedical or product research. [1989 c 359 § 3.]

Application of consumer protection act: RCW 19.86.145.

16.52.225 Nonambulatory livestock—Transporting or accepting delivery—Gross misdemeanor—Definition.

(1) Unless otherwise cited for a civil infraction by the department of agriculture under RCW 16.36.116(2), a person is guilty of a gross misdemeanor punishable as provided in RCW 9A.20.021 if he or she knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation.

(2) Nonambulatory livestock must be humanely euthanized before transport to, from, or between locations listed in subsection (1) of this section.

(3) Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot.

(4) For the purposes of this section, "nonambulatory livestock" means cattle, sheep, swine, goats, horses, mules, or other equine that cannot rise from a recumbent position or cannot walk, including but not limited to those with broken appendages, severed tendons or ligaments, nerve paralysis, a fractured vertebral column, or metabolic conditions. [2009 c 347 § 2; 2004 c 234 § 1.]

Effective date—2004 c 234: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 234 § 2.]

16.52.230 Remedies not impaired. No provision of RCW 9.08.070 through 9.08.078 or 16.52.220 shall in any way interfere with or impair the operation of any other provision of this chapter or Title 28B RCW, relating to higher edu-

cation or biomedical research. The provisions of RCW 9.08.070 through 9.08.078 and 16.52.220 are cumulative and nonexclusive and shall not affect any other remedy. [2003 c 53 § 114; 1989 c 359 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

16.52.300 Dogs or cats used as bait—Seizure—Limitation. (1) If any person commits the crime of animal cruelty in the first or second degree by using or trapping to use domestic dogs or cats as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, law enforcement officers or animal control officers shall seize and hold the animals being trained. The seized animals shall be disposed of by the court pursuant to the provisions of RCW 16.52.200(3).

(2) This section shall not in any way interfere with or impair the operation of any provision of Title 28B RCW, relating to higher education or biomedical research. [1994 c 261 § 15; 1990 c 226 § 1.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.305 Unlawful use of hook—Gross misdemeanor. (1) A person is guilty of the unlawful use of a hook if the person utilizes, or attempts to use, a hook with the intent to pierce the flesh or mouth of a bird or mammal.

(2) Unlawful use of a hook is a gross misdemeanor. [2004 c 220 § 1.]

Effective date—2004 c 220: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2004]." [2004 c 220 § 2.]

16.52.310 Dog breeding—Limit on the number of dogs—Required conditions—Penalty—Limitation of section—Definitions. (1) A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.

(2) Any person who owns, possesses, controls, or otherwise has charge or custody of more than ten dogs with intact sexual organs over the age of six months and keeps the dogs in an enclosure for the majority of the day must at a minimum:

(a) Provide space to allow each dog to turn about freely, to stand, sit, and lie down. The dog must be able to lie down while fully extended without the dog's head, tail, legs, face, or feet touching any side of an enclosure and without touching any other dog in the enclosure when all dogs are lying down simultaneously. The interior height of the enclosure must be at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position. Each enclosure must be at least three times the length and width of the longest dog in the enclosure, from tip of nose to base of tail and shoulder blade to shoulder blade.

(b) Provide each dog that is over the age of four months with a minimum of one exercise period during each day for a total of not less than one hour of exercise during such day. Such exercise must include either leash walking or giving the dog access to an enclosure at least four times the size of the minimum allowable enclosure specified in (a) of this subsection.

tion allowing the dog free mobility for the entire exercise period, but may not include use of a cat mill, jenny mill, slat mill, or similar device, unless prescribed by a doctor of veterinary medicine. The exercise requirements in this subsection do not apply to a dog certified by a doctor of veterinary medicine as being medically precluded from exercise.

(c) Maintain adequate housing facilities and primary enclosures that meet the following requirements at a minimum:

(i) Housing facilities and primary enclosures must be kept in a sanitary condition. Housing facilities where dogs are kept must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels, and to prevent moisture condensation. Housing facilities must have a means of fire suppression, such as functioning fire extinguishers, on the premises and must have sufficient lighting to allow for observation of the dogs at any time of day or night;

(ii) Housing facilities must enable all dogs to remain dry and clean;

(iii) Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

(iv) Housing facilities must provide sufficient shade to shelter all the dogs housed in the primary enclosure at one time;

(v) A primary enclosure must have floors that are constructed in a manner that protects the dogs' feet and legs from injury;

(vi) Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;

(vii) Feces, hair, dirt, debris, and food waste must be removed from primary enclosures at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests, and odors; and

(viii) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision.

(d) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.

(e) Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Animals requiring euthanasia must be euthanized only by a licensed veterinarian.

(3) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor.

(2012 Ed.)

(4) This section does not apply to the following:

(a) A publicly operated animal control facility or animal shelter;

(b) A private, charitable not-for-profit humane society or animal adoption organization;

(c) A veterinary facility;

(d) A retail pet store;

(e) A research institution;

(f) A boarding facility; or

(g) A grooming facility.

(5) Subsection (1) of this section does not apply to a commercial dog breeder licensed, before January 1, 2010, by the United States department of agriculture pursuant to the federal animal welfare act (Title 7 U.S.C. Sec. 2131 et seq.).

(6) For the purposes of this section, the following definitions apply, unless the context clearly requires otherwise:

(a) "Dog" means any member of *Canis lupus familiaris*; and

(b) "Retail pet store" means a commercial establishment that engages in a for-profit business of selling at retail cats, dogs, or other animals to be kept as household pets and is regulated by the United States department of agriculture. [2009 c 286 § 2.]

Findings—2009 c 286: "The legislature finds that:

(1) Dogs are neither a commercial crop nor commodity and should not be indiscriminately or irresponsibly mass produced;

(2) Large-scale dog breeding increases the likelihood that the dogs will be denied their most basic needs including but not limited to: Sanitary living conditions, proper and timely medical care, the ability to move freely at least once per day, and adequate shelter from the elements;

(3) Without proper oversight, large-scale breeding facilities can easily fall below even the most basic standards of humane housing and husbandry;

(4) Current Washington state laws are inadequate regarding the care and husbandry of dogs in large-scale breeding facilities;

(5) No Washington state agency currently regulates large-scale breeding facilities;

(6) The United States department of agriculture does not regulate large-scale breeding facilities that sell dogs directly to the public and thus, such direct-sales breeders are currently exempt from even the minimum care and housing standards outlined in the federal animal welfare act;

(7) Documented conditions at large-scale breeding facilities include unsanitary conditions, potential for soil and groundwater contamination, the spread of zoonotic parasites and infectious diseases, and the sale of sick and dying animals to the public; and

(8) An unfair fiscal burden is placed on city, county, and state taxpayers as well as government agencies and nongovernmental organizations, which are required to care for discarded or abused and neglected dogs from large-scale breeding facilities." [2009 c 286 § 1.]

Effective date—2009 c 286: "This act takes effect January 1, 2010." [2009 c 286 § 3.]

16.52.320 Maliciously killing or causing substantial bodily harm to livestock belonging to another—Penalty.

(1) It is unlawful for a person to, with malice, kill or cause substantial bodily harm to livestock belonging to another person.

(2) A violation of this section constitutes a class C felony.

(3) For the purposes of this section, "malice" has the same meaning as provided in RCW 9A.04.110, but applied to acts against livestock. [2011 c 67 § 1.]

Chapter 16.54 RCW
ABANDONED ANIMALS

Sections

16.54.010	When deemed abandoned.
16.54.020	Disposition of abandoned animal by person having custody.
16.54.030	Duty of sheriff—Sale—Disposition of proceeds.

16.54.010 When deemed abandoned. An animal is deemed to be abandoned under the provisions of this chapter when it is placed in the custody of a veterinarian, boarding kennel owner, or any person for treatment, board, or care and:

(1) Having been placed in such custody for an unspecified period of time the animal is not removed within fifteen days after notice to remove the animal has been given to the person who placed the animal in such custody or having been so notified the person depositing the animal refuses or fails to pay agreed upon or reasonable charges for the treatment, board, or care of such animal, or;

(2) Having been placed in such custody for a specified period of time the animal is not removed at the end of such specified period or the person depositing the animal refuses to pay agreed upon or reasonable charges for the treatment, board, or care of such animal. [1977 ex.s. c 67 § 1; 1955 c 190 § 1.]

16.54.020 Disposition of abandoned animal by person having custody. Any person having in his or her care, custody, or control any abandoned animal as defined in RCW 16.54.010, may deliver such animal to any humane society having facilities for the care of such animals or to any pound maintained by or under contract or agreement with any city or county within which such animal was abandoned. If no such humane society or pound exists within the county the person with whom the animal was abandoned may notify the sheriff of the county wherein the abandonment occurred. [2011 c 336 § 425; 1955 c 190 § 2.]

16.54.030 Duty of sheriff—Sale—Disposition of proceeds. It shall be the duty of the sheriff of such county upon being so notified, to dispose of such animal as provided by law in reference to estrays if such law is applicable to the animal abandoned, or if not so applicable then such animal shall be sold by the sheriff at public auction. Notice of any such sale shall be given by posting a notice in three public places in the county at least ten days prior to such public sale. Proceeds of such sale shall be paid to the county treasurer for deposit in the county general fund. [1955 c 190 § 3.]

Chapter 16.57 RCW
IDENTIFICATION OF LIVESTOCK

Sections

16.57.010	Definitions.
16.57.015	Livestock identification advisory committee—Rule review—Fee setting.
16.57.020	Livestock brands—Director is the recorder—Recording fee.
16.57.023	Permanent renewal of brands—Heritage brands—Fees.
16.57.025	Livestock inspection—Licensed and accredited veterinarians—Fees.
16.57.030	Tattoo brands and marks not recordable.
16.57.040	Production record brands.
16.57.050	Use of unrecorded brand prohibited—Exception.
16.57.060	Brands similar to governmental brands not to be recorded.
16.57.070	Conflicting claims to brand.

16.57.080	Renewal of recorded brands—Schedule—Fee—Failure to pay.
16.57.090	Brand is personal property—Instruments affecting title, recording, effect—Fee—Nonliability of director for agents. Right to use brand—Brand as evidence of title.
16.57.100	Preemptory right to use brand.
16.57.105	Size and characteristics of brand.
16.57.110	Removal or alteration of brand—Penalty.
16.57.120	Similar brands not to be recorded.
16.57.130	Certified copy of record of brand—Fee.
16.57.140	Brand book—Contents—Costs.
16.57.150	Administration of brands—Rules.
16.57.153	Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates.
16.57.160	Agreements with others to perform livestock inspection.
16.57.165	Inspection of livestock, hides, records.
16.57.170	Search warrants.
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16.57.200	Arrest without warrant.
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16.57.220	Payment of inspection fee—Due at inspection—Lien—Late fee.
16.57.223	Charges for livestock inspection—Actual inspection required.
16.57.230	Certificates of permit, inspection, self-inspection.
16.57.240	Moving or transporting cattle—Certificate or proof of ownership must accompany—Exceptions.
16.57.243	Authority to stop vehicles carrying cattle or horses.
16.57.245	Removal of cattle or horses from state—Inspection certificate required.
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16.57.410	Ratite identification.
16.57.420	Replacement copies of brand inspection documents—Rules—Fees.
16.57.430	Unlawful transport or delivery of cattle or horses.
16.57.440	Severability—1959 c 54.
16.57.900	Severability—1967 c 240.
16.57.901	Effective dates—2003 c 326.

16.57.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(2) "Certificate of permit" means a form prescribed by and obtained from the director that is completed by the owner or a person authorized to act on behalf of the owner to show the ownership of livestock. It is used to document ownership

of livestock while in transit within the state or on consignment to any public livestock market, special sale, slaughter plant or certified feed lot. It does not evidence inspection of livestock.

(3) "Department" means the department of agriculture of the state of Washington.

(4) "Director" means the director of the department or his or her duly authorized representative.

(5) "Horses" means horses, burros, and mules.

(6) "Individual identification certificate" means an inspection certificate that authorizes the livestock owner to transport the animal out of state multiple times within a set period of time.

(7) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(8) "Inspection certificate" means a certificate issued by the director or a veterinarian certified by the director documenting the ownership of an animal based on an inspection of the animal. It includes an individual identification certificate.

(9) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, and goats.

(10) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(11) "Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:

(a) In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;

(b) In the nuchal ligament of a horse unless otherwise specified by rule of the director; and

(c) In locations of other livestock species as specified by rule of the director when requested by an association of producers of that species of livestock.

(12) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(13) "Production record brand" means a number brand which shall be used for production identification purposes only.

(14) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(15) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(16) "Self-inspection certificate" means a form prescribed by and obtained from the director that was completed and signed by the buyer and seller of livestock to document a change in ownership before June 10, 2010. [2010 c 66 § 5; 2003 c 326 § 2; 1996 c 105 § 1; 1993 c 105 § 2; 1989 c 286 § 22; 1981 c 296 § 15; 1979 c 154 § 17; 1967 c 240 § 34; 1959 c 54 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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Legislative finding and purpose—1993 c 105: "The legislature finds that ratites have been raised for commercial purposes on farms in the United States for over sixty years and have been raised elsewhere for over one hundred twenty years.

In recognition that ratite farming is an agricultural pursuit, the purpose of this act is to assure that the regulatory mechanisms regarding animal health and ownership identification are in place." [1993 c 105 § 1.]

Additional notes found at www.leg.wa.gov

16.57.015 Livestock identification advisory committee—Rule review—Fee setting. (1) The director shall establish a livestock identification advisory committee. The committee shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. As used in this subsection, "meat processor" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.). In making appointments, the director shall solicit nominations from organizations representing these groups statewide. The committee shall elect a member to serve as chair of the committee.

(2) The purpose of the committee is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding inspection fees and related licensing fees. The director shall consult the committee before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.65.030, 16.65.037, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter and the rule has not received the approval of the advisory committee, the director shall file with the committee a written statement setting forth the director's reasons for proposing the rule without the committee's approval.

(3) The members of the advisory committee serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the committee to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 21 § 51; 2003 c 326 § 3; 1993 c 354 § 10.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

16.57.020 Livestock brands—Director is the recorder—Recording fee. The director shall be the recorder of livestock brands and such brands shall not be recorded elsewhere in this state. Any person desiring to record a livestock brand shall apply on a form prescribed by the director. The application shall be accompanied by a facsimile of the brand applied for and a one hundred twenty dollar recording fee. The director shall, upon his or her satisfaction that the application and brand facsimile meet the requirements of this chapter and its rules, record the brand. [2003 c 326 § 4; 1994 c 46 § 7; 1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

Additional notes found at www.leg.wa.gov

16.57.023 Permanent renewal of brands—Heritage brands—Fees. The director may adopt rules establishing criteria and fees for the permanent renewal of brands registered with the department but renewed as livestock heritage brands. Such heritage brands are not intended for use on livestock. [2003 c 326 § 5; 1998 c 263 § 5.]

16.57.025 Livestock inspection—Licensed and accredited veterinarians—Fees. The director may enter into agreements with Washington state licensed and accredited veterinarians, who have been certified by the director, to perform livestock inspection. Fees for livestock inspection performed by a certified veterinarian shall be collected by the veterinarian and remitted to the director. Veterinarians providing livestock inspection may charge a fee for livestock inspection that is in addition to and separate from fees collected under RCW 16.57.220. The director may adopt rules necessary to implement livestock inspection performed by veterinarians and may adopt fees to cover the cost associated with certification of veterinarians. [2003 c 326 § 6; 1998 c 263 § 6.]

16.57.030 Tattoo brands and marks not recordable. The director shall not record tattoo brands or marks for any purpose. [2003 c 326 § 7; 1959 c 54 § 3.]

16.57.040 Production record brands. The director may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the director and shall be placed on livestock immediately below the recorded ownership brand or any other location prescribed by the director. [2003 c 326 § 8; 1974 ex.s. c 64 § 1; 1959 c 54 § 4.]

16.57.050 Use of unrecorded brand prohibited—Exception. No person shall place a brand on livestock for any purpose unless the brand is recorded with the director in the person's name. [2003 c 326 § 9; 1959 c 54 § 5.]

16.57.060 Brands similar to governmental brands not to be recorded. No brand shall be recorded for ownership purposes which will be applied in the same location and is similar or identical to a brand used or reserved for ownership or health purposes by a governmental agency or the agent of such an agency. [1959 c 54 § 6.]

16.57.070 Conflicting claims to brand. The director shall determine conflicting claims between applicants to a brand, and in so doing shall consider the priority of applicants. [1959 c 54 § 7.]

16.57.080 Renewal of recorded brands—Schedule—Fee—Failure to pay. The director shall establish by rule a schedule for the renewal of recorded brands. The fee for renewal of a recorded brand shall be one hundred twenty dollars for each four-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis. At least sixty days before the expiration of a recorded brand, the director shall notify by letter the owner of record of the brand that on the payment of the renewal fee the director shall issue

proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent ownership period. The failure of the owner to pay the renewal fee by the date required by rule shall cause ownership of the brand to expire. For one year following the expiration, the director shall record the brand only to the prior owner upon payment of the renewal fee and a late fee of twenty-five dollars. If the brand is not recorded within one year to the prior owner, the director may issue the brand to any other applicant. [2003 c 326 § 10; 1994 c 46 § 16; 1993 c 354 § 5; 1991 c 110 § 1; 1974 ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

Additional notes found at www.leg.wa.gov

16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Fee—Nonliability of director for agents. A brand is the personal property of the owner of record. Any instrument affecting the title of the brand shall be executed by the recorded owner and acknowledged by a notary public. The director shall record the instrument upon presentation and payment of a recording fee of twenty-five dollars. The recording shall be constructive notice to all the world of the existence and conditions affecting the title to the brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of the director's agents to properly record the instrument. [2003 c 326 § 11; 1994 c 46 § 17; 1993 c 354 § 6; 1974 ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

Additional notes found at www.leg.wa.gov

16.57.100 Right to use brand—Brand as evidence of title. The right to use a brand shall be evidenced by the original certificate issued by the director showing that the brand is of present record or a certified copy of the record of the brand showing that it is of present record. A healed brand of record on livestock shall be prima facie evidence that the recorded owner of the brand has legal title to the livestock and is entitled to its possession. The director may require additional proof of ownership for any animal showing more than one healed brand. [2003 c 326 § 12; 1971 ex.s. c 135 § 3; 1959 c 54 § 10.]

16.57.105 Preemptory right to use brand. Any person having a brand recorded with the department shall have a preemptory right to use such brand and its design under any newly approved method of branding adopted by the director. [1967 c 240 § 38.]

16.57.110 Size and characteristics of brand. No brand shall be placed on livestock that is not permanent in nature and of a size that is not readily visible. The director, in order to assure that brands are readily visible, may prescribe the size of branding irons to be used for ownership brands. [1959 c 54 § 11.]

16.57.120 Removal or alteration of brand—Penalty. No person shall remove or alter a brand of record on livestock without first having secured the written permission of the

director. Violation of this section is a gross misdemeanor. [2003 c 326 § 13; 1991 c 110 § 2; 1959 c 54 § 12.]

16.57.130 Similar brands not to be recorded. The director shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between the brands when applied to livestock. [2003 c 326 § 14; 1959 c 54 § 13.]

16.57.140 Certified copy of record of brand—Fee. The owner of a brand of record may obtain from the director a certified copy of the record of the owner's brand upon payment of a fee of fifteen dollars. [2003 c 326 § 15; 1994 c 46 § 18; 1993 c 354 § 7; 1974 ex.s. c 64 § 4; 1959 c 54 § 14.]

Additional notes found at www.leg.wa.gov

16.57.150 Brand book—Contents—Costs. The director shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. The book shall contain the name and address of the owners of brands of record and a copy of the livestock identification laws and rules. Supplements to the brand book showing newly recorded brands, amendments, or newly adopted rules shall be published at the discretion of the director. Whenever the director deems it necessary, the director may publish a new brand book. The director may collect moneys to recover the reasonable costs of publishing and distributing copies of the brand book. [2003 c 326 § 16; 1974 ex.s. c 64 § 5; 1959 c 54 § 15.]

16.57.153 Administration of brands—Rules. The director may adopt rules necessary to administer the recording and changing of ownership of brands. [2003 c 326 § 17.]

16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates. (1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification;

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle; and

(d) Designating when inspection certificates, certificates of permit, or other transportation documents required by law or rule must designate a physical address of a destination. Cattle and horses must be delivered or transported directly to the physical address of that destination.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle. [2011 c 204 § 13; 2010 c 66 § 6; 2006 c 156 § 3; 2003 c 326 § 18; 1991 c

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110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Effective date—2006 c 156: See note following RCW 16.57.220.

Additional notes found at www.leg.wa.gov

16.57.165 Agreements with others to perform livestock inspection. The director may, in order to reduce the cost of inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing livestock inspection in areas where inspection by the director may not readily be available. [2003 c 326 § 19; 1971 ex.s. c 135 § 6.]

16.57.170 Inspection of livestock, hides, records. The director may enter at any reasonable time any slaughterhouse or public livestock market to inspect livestock or hides, and may enter at any reasonable time an establishment where hides are held to inspect them for brands or other means of identification. The director may enter any of these premises at any reasonable time to examine all books and records required by law in matters relating to livestock identification. For purposes of this section, "any reasonable time" means during regular business hours or during any working shift. [2003 c 326 § 20; 1959 c 54 § 17.]

16.57.180 Search warrants. Should the director be denied access to any premises or establishment where access was sought for the purposes set forth in RCW 16.57.170, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises or establishment for those purposes. The court may upon application, issue the search warrant for the purposes requested. [2003 c 326 § 21; 1959 c 54 § 18.]

16.57.200 Duty of owner or agent—Livestock inspection. Any owner or his or her agent shall make livestock being inspected readily accessible and shall cooperate with the director to carry out the inspection in a safe and expeditious manner. [2003 c 326 § 22; 1959 c 54 § 20.]

16.57.210 Arrest without warrant. The director shall have authority to arrest without warrant anywhere in the state any person found in the act of, or whom the director has reason to believe is guilty of, transporting, holding, selling, or slaughtering stolen livestock. Any person arrested by the director shall be turned over to the county sheriff or other local law enforcement officer where the arrest was made, as quickly as possible. [2003 c 326 § 23; 1959 c 54 § 21.]

16.57.220 Livestock inspection—Fee schedule—Certificates. (1) Except as provided for in RCW 16.65.090 and otherwise in this section, the fee for livestock inspection is one dollar and sixty cents per head for cattle and three dollars and fifty cents for horses or the time and mileage fee, whichever is greater.

(2) When cattle are identified with the owner's brand or other form of identification specified by the director by rule, the fee for livestock inspection is one dollar and ten cents per head or the time and mileage fee, whichever is greater.

(3) No inspection fee is charged for a calf that is inspected before moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington-recorded brand or other form of identification specified by the director by rule.

(4) The fee for inspection of cattle at a processing plant with a daily capacity of no more than five hundred head of cattle where the United States department of agriculture maintains a meat inspection program is four dollars per head.

(5) When a single inspection certificate issued for thirty or more horses belonging to one person, the fee for livestock inspection is two dollars per head or the time and mileage fee, whichever is greater.

(6) The fee for individual identification certificates is twenty dollars for an annual certificate and sixty dollars for a lifetime certificate or the time and mileage fee, whichever is greater. However, the fee for an annual certificate listing thirty or more animals belonging to one person is five dollars per head or the time and mileage fee, whichever is greater. A lifetime certificate shall not be issued until the fee has been paid to the director.

(7) The minimum fee for the issuance of an inspection certificate by the director is five dollars. The minimum fee does not apply to livestock consigned to a public livestock market or special sale or inspected at a cattle processing plant.

(8) For purposes of this section, "the time and mileage fee" means seventeen dollars per hour and the current mileage rate set by the office of financial management. [2010 c 66 § 7; 2006 c 156 § 1; 2003 c 326 § 24; 1997 c 356 § 3; 1997 c 356 § 2; 1995 c 374 § 49; (1995 c 374 § 48 expired July 1, 1997). Prior: 1994 c 46 § 25; 1994 c 46 § 19; 1993 c 354 § 8; 1981 c 296 § 17; 1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

Effective date—2006 c 156: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2006." [2006 c 156 § 4.]

Additional notes found at www.leg.wa.gov

16.57.223 Payment of inspection fee—Due at inspection—Lien—Late fee. (1) Any inspection fee shall be paid to the department by the owner or person in possession of the livestock unless the inspection is requested by the purchaser and then the fee shall be paid by the purchaser.

(2) Except as provided by rule, the inspection fee is due and payable at the time inspection is performed and shall be paid upon billing by the department and, if not, constitutes a prior lien on the cattle or cattle hides or horses or horse hides inspected until the fee is paid.

(3) A late fee of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. [2003 c 326 § 25.]

16.57.230 Charges for livestock inspection—Actual inspection required. No person shall collect or make a charge for inspection of livestock unless there has been an actual inspection of the livestock. [2003 c 326 § 26; 1995 c 374 § 50; 1959 c 54 § 23.]

Additional notes found at www.leg.wa.gov

16.57.240 Certificates of permit, inspection, self-inspection. (1) Certificates of permit, inspection certificates, and self-inspection certificates meeting the requirements of RCW 16.57.160 shall show the owner, number, breed, sex, brand, or other method of identification of the cattle or horses and any other necessary information required by the director.

(2) The director may issue certificate of permit forms to any person on payment of a fee established by rule.

(3) Certificates of permit, inspection certificates, self-inspection certificates meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership shall be kept by the owner and/or person in possession of any cattle and shall be furnished to the director or any peace officer upon demand.

(4) A self-inspection certificate meeting the requirements of RCW 16.57.160 is not valid if proof of ownership had not been provided by the seller to the buyer for cattle bearing brands not recorded to the seller. [2010 c 66 § 8; 2003 c 326 § 27; 1995 c 374 § 51; 1991 c 110 § 4; 1985 c 415 § 8; 1981 c 296 § 18; 1959 c 54 § 24.]

Additional notes found at www.leg.wa.gov

16.57.243 Moving or transporting cattle—Certificate or proof of ownership must accompany—Exceptions. (1) Cattle may not be moved or transported within Washington state without being accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership, except when the cattle are moved or transported:

(a) Upon lands under the exclusive control of the person moving or transporting the cattle; or

(b) For temporary grazing or feeding purposes and have the recorded brand of the person having or transporting the cattle.

(2) Certificates of permit, inspection certificates, self-inspection certificates meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership accompanying cattle being moved or transported within Washington state shall be subject to inspection at any time by the director or any peace officer. [2010 c 66 § 9; 2003 c 326 § 28.]

16.57.245 Authority to stop vehicles carrying cattle or horses. The director or any peace officer may stop vehicles carrying cattle or horses to determine if the livestock being transported are accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.010, or other satisfactory proof of ownership, as determined by the director. [2010 c 66 § 10; 2003 c 326 § 29.]

16.57.260 Removal of cattle or horses from state—Inspection certificate required. It is unlawful for any person to remove or cause to be removed or accept for removal from this state, any cattle or horses which are not accompanied at all times by an inspection certificate on such cattle or horses, except as provided by rule adopted under this chapter. [2003 c 326 § 30; 1981 c 296 § 19; 1959 c 54 § 26.]

Additional notes found at www.leg.wa.gov

16.57.267 Failure to present animal for inspection. It is unlawful for any person to fail to present an animal for inspection at any mandatory inspection point designated by the director by rule under this chapter. [2003 c 326 § 31.]

16.57.270 Unlawful to refuse assistance in establishing identity and ownership of livestock. It is unlawful for any person moving or transporting livestock in this state to refuse to assist the director or any peace officer in establishing the identity and ownership of the livestock being moved or transported. [2003 c 326 § 32; 1959 c 54 § 27.]

16.57.275 Transporting cattle carcass or primal part—Certificate of permit required. Any cattle carcass, or primal part thereof, of any breed or age being transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for the slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of the carcass or primal part thereof and, if the carcass or primal part is delivered to a facility custom handling the carcasses or primal parts thereof, the certificate of permit shall be deposited with the owner or manager of the custom handling facility and the certificate of permit shall be retained for a period of one year and be made available to the department for inspection during regular business hours or any working shift. [2003 c 326 § 33; 1967 c 240 § 37.]

16.57.277 Custom slaughter beef tags—Fee—Rules. Any person licensed as a custom farm slaughterer under RCW 16.49.035 shall complete and attach a custom slaughter beef tag to each of the four quarters of all slaughtered cattle handled by the slaughterer. The tags must remain on the quarters until the quarters are cut and wrapped. Only the director may provide custom slaughter beef tags to custom farm slaughterers. The fee for each set of four custom slaughter beef tags is as prescribed in WAC 16-607-100 as it existed on January 1, 2000. The director may, by rule, establish criteria for the use of custom slaughter beef tags. [2000 c 99 § 14.]

16.57.280 Possession of cattle or horse marked with another's brand—Penalty. (1) No person shall knowingly have possession of any cattle or horse marked with a recorded brand of another person unless the:

- (a) Cattle or horse lawfully bears the person's own healed recorded brand;
- (b) Cattle or horse is accompanied by a certificate of permit from the owner of the recorded brand;
- (c) Cattle or horse is accompanied by an inspection certificate;
- (d) Cattle are accompanied by a self-inspection certificate meeting the requirements of RCW 16.57.010;
- (e) Horse is accompanied by a bill of sale from the previous owner; or
- (f) Cattle or horse is accompanied by other satisfactory proof of ownership as designated in rule.

(2) A violation of this section constitutes a gross misdemeanor. [2010 c 66 § 11; 2003 c 326 § 34; 1995 c 374 § 52; 1991 c 110 § 5; 1959 c 54 § 28.]

Additional notes found at www.leg.wa.gov

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16.57.290 Impounding cattle and horses—No certificate or proof of ownership when offered for sale—Disposition. All cattle and horses that are not accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership when offered for sale and presented for inspection by the director, shall be impounded. If theft is suspected, the director shall immediately initiate an investigation. If theft is not suspected, the animal shall be sold and the proceeds retained by the director. Upon the sale of the cattle or horses, the director shall give the purchasers an inspection certificate for the cattle or horses documenting their ownership. [2010 c 66 § 12; 2003 c 326 § 35; 1995 c 374 § 53; 1989 c 286 § 23; 1981 c 296 § 20; 1979 c 154 § 18; 1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

Additional notes found at www.leg.wa.gov

16.57.300 Proceeds from sale of impounded cattle and horses—Paid to director—Exception. Except under RCW 16.57.303, the proceeds from the sale of cattle and horses when impounded under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other stray proceeds. [2003 c 326 § 36; 1989 c 286 § 24; 1981 c 296 § 21; 1959 c 54 § 30.]

Additional notes found at www.leg.wa.gov

16.57.303 Proceeds from sale of impounded dairy breed cattle—Paid to seller. The proceeds from the sale of dairy breed cattle when impounded under RCW 16.57.290, and after paying the cost thereof, shall be paid to the seller if:

- (1) The cattle bears a brand that is not recorded in this state or any state where a reciprocal agreement is in place as provided under RCW 16.57.340;
- (2) There is no evidence of theft;
- (3) The director has posted the brand for at least ninety days at each licensed public livestock market in this state and any other state where the director provides for livestock inspection; and
- (4) No other person has established legal ownership of the cattle with the director.

The proceeds from the sale shall be held by the director until paid to the seller or other person as specified by the director. However, the proceeds from a sale of the cattle at a licensed public livestock market shall be held by the licensee. [2003 c 326 § 37.]

16.57.310 Notice of sale—Claim on proceeds. When a person has been notified by registered mail that animals bearing the person's recorded brand have been sold by the director, the person shall present to the director a claim on the proceeds within thirty days from the receipt of the notice or

the director may decide that no claim exists. [2003 c 326 § 38; 1959 c 54 § 31.]

16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after sale, barter, trade. If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person. [2003 c 326 § 39; 1991 c 110 § 6; 1959 c 54 § 32.]

16.57.330 Disposition of proceeds of sale—No claim made—No proof of ownership provided. If, after the expiration of one year from the date of sale, no claim under RCW 16.57.310 is made or no satisfactory proof of ownership is provided under RCW 16.57.320, the money shall be credited to the department to be expended in carrying out the provisions of this chapter. [2003 c 326 § 40; 1959 c 54 § 33.]

16.57.340 Reciprocal agreements—When livestock from another state an estray, sale. The director has the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation, or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from those states estrays if the livestock is not accompanied by the proper inspection certificate or other certificates required by the law of the state of origin of the livestock. The director may hold the livestock subject to all costs of holding or sell the livestock and send the funds, after the deduction of the cost of the sale, to the proper authority in the state of origin of the livestock. [2003 c 326 § 41; 1959 c 54 § 34.]

16.57.350 Rules—Enforcement of chapter. The director may adopt such rules as are necessary to carry out the purposes of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and/or rules adopted hereunder. No person shall interfere with the director when he or she is performing or carrying out duties imposed on him or her by this chapter and/or rules adopted hereunder. [1994 c 46 § 8; 1959 c 54 § 35.]

Additional notes found at www.leg.wa.gov

16.57.353 Rules—Compliance with federal requirements. (1) The director may adopt rules:

(a) To support the agriculture industry in meeting federal requirements for the country-of-origin labeling of meat. Any requirements established under this subsection for country of origin labeling purposes shall be substantially consistent with and shall not exceed the requirements established by the United States department of agriculture; and

(b) In consultation with the livestock identification advisory committee under RCW 16.57.015, to implement federal requirements for animal identification needed to trace the source of livestock for disease control and response purposes.

(2) The director may cooperate with and enter into agreements with other states and agencies of federal government to

carry out such systems and to promote consistency of regulation. [2011 1st sp.s. c 21 § 52; 2004 c 233 § 1.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

16.57.360 Civil infractions—Time and mileage fee. (1)(a) The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

(b) The violation of any provision of this chapter and/or rules adopted under this chapter shall constitute a class 1 civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein.

(2) The department may charge a time and mileage fee for the cost of an investigation including inspecting animals and related records during an investigation of a proven violation of this chapter. The fee may be up to eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2011 c 204 § 15; 2003 c 326 § 42; 1991 c 110 § 7; 1959 c 54 § 36.]

16.57.370 Disposition of fees. All fees collected under the provisions of this chapter shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2003 c 326 § 43; 1959 c 54 § 37.]

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

16.57.400 Horse and cattle identification—Inspection when consigned for sale. Horses and cattle may be identified by individual identification certificates or other means of identification authorized by the director. The certificates or other means of identification are valid only for the use of the owner in whose name it is issued.

Horses and cattle identified pursuant to this section are only subject to inspection when the animal is consigned for sale. [2003 c 326 § 44; 1994 c 46 § 20; 1993 c 354 § 9; 1981 c 296 § 23; 1974 ex.s. c 38 § 3.]

Additional notes found at www.leg.wa.gov

16.57.405 Microchip in a horse—Removal with intent to defraud—Gross misdemeanor. A person who removes or causes to be removed a microchip implanted in a horse, or who removes or causes to be removed a microchip from one horse and implants or causes it to be implanted in another horse, with the intent to defraud a subsequent purchaser, is guilty of a gross misdemeanor. [1996 c 105 § 2.]

16.57.407 Microchip in a horse—Authority to investigate removal. The department has the authority to conduct an investigation of an incident where scars or other marks indicate that a microchip has been removed from a horse. [1996 c 105 § 3.]

16.57.410 Horses—Registering agencies—Permit required—Fee—Records—Identification symbol inspections—Rules. (1) No person may act as a registering agency

without a permit issued by the director. The director may issue a permit to any person to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for a permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of two hundred and fifty dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Horses shall be examined for individual identification symbols when presented for inspection.

(4) The director shall adopt rules necessary to administer this section. [2003 c 326 § 45; 1993 c 354 § 11; 1989 c 286 § 25; 1981 c 296 § 35.]

Additional notes found at www.leg.wa.gov

16.57.420 Ratite identification. The department may, in consultation with representatives of the ratite industry, develop by rule a system that provides for the identification of individual ratites through the use of microchipping. The department may establish fees for the issuance or reissuance of microchipping numbers sufficient to cover the expenses of the department. [1993 c 105 § 3.]

Legislative finding and purpose—1993 c 105: See note following RCW 16.57.010.

16.57.430 Replacement copies of brand inspection documents—Rules—Fees. The director may:

(1) Adopt rules governing issuance of replacement copies of brand inspection documents; and

(2) Charge a fee of twenty-five dollars for such copies, which may be increased by rule. [2010 c 66 § 13.]

16.57.440 Unlawful transport or delivery of cattle or horses. It is unlawful for a person to transport or deliver cattle or horses to any destination other than the physical address of the destination designated on an inspection certificate, certificate of permit, or other transportation document when required by law or rule. The director may exempt cattle and horses from this requirement by rule. [2011 c 204 § 14.]

16.57.900 Severability—1959 c 54. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 54 § 38.]

16.57.901 Severability—1967 c 240. See note following RCW 43.23.010.

16.57.902 Effective dates—2003 c 326. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003,

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except for sections 4 and 10 of this act which take effect January 1, 2004. [2003 c 326 § 93.]

Chapter 16.58 RCW

IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

Sections

16.58.010	Purpose.
16.58.020	Definitions.
16.58.030	Rules—Interference with director proscribed.
16.58.040	Certified feed lot license—Required—Application, contents.
16.58.050	Certified feed lot license—Fee—Issuance or renewal— Inspection prior to issuance of original license.
16.58.060	Certified feed lot license—Expiration—Late renewal.
16.58.070	Certified feed lot license—Denial, suspension, or revocation—Hearings.
16.58.080	Livestock inspection—Facilities required—Help to be furnished.
16.58.095	Inspection required for cattle not having inspection certificate.
16.58.100	Audits—Purpose.
16.58.110	Records—Contents—Examination.
16.58.120	Records required at each certified feed lot.
16.58.130	Feed lots—Fee for each head of cattle handled—Failure to pay.
16.58.140	Disposition of fees.
16.58.150	Situations when no inspection required—Fee—Suspension of license—Hearing.
16.58.160	Suspension of license awaiting investigation—Hearing.
16.58.170	General penalties—Subsequent offenses.
16.58.900	Chapter as cumulative and nonexclusive.
16.58.910	Severability—1971 ex.s. c 181.

16.58.010 Purpose. The purpose of this chapter is to expedite the movement of cattle from producers to the point of slaughter without losing the ownership identity of such cattle, and further to provide for fair and economical methods of identification of cattle in such commercial feed lots. [1979 c 81 § 1; 1971 ex.s. c 181 § 1.]

16.58.020 Definitions. For the purpose of this chapter:

(1) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any rules adopted under this chapter and which holds a valid license from the director.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his or her duly authorized representative.

(4) "Licensee" means any persons licensed under the provisions of this chapter.

(5) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(6) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(7) "Change of ownership" means the transfer of ownership from one person to another by the sale of livestock. It does not mean: A change in partners within a partnership; a change in members within an association or a society; or the sale of stock within a corporation, company, or association.

(8) "Direct to slaughter" means the delivery of livestock to a slaughter plant within ten days of the sale of the cattle to the slaughter plant. [2003 c 326 § 46; 1971 ex.s. c 181 § 2.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.030 Rules—Interference with director proscribed. The director may adopt those rules as are necessary to carry out the purpose of this chapter. No person shall interfere with the director when he or she is performing or carrying out any duties imposed upon the director by this chapter or rules adopted under this chapter. [2003 c 326 § 47; 1971 ex.s. c 181 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.040 Certified feed lot license—Required—Application, contents. Any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the director for that purpose. The application for a license shall be on a form prescribed by the director and shall include the following:

(1) The number of certified feed lots the applicant intends to operate and their exact location and mailing address;

(2) The legal description of the land on which the certified feed lot will be situated;

(3) A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;

(4) The estimated number of cattle which can be handled for feeding purposes at each certified feed lot; and

(5) Any other information necessary to carry out the purpose and provisions of this chapter and rules adopted under this chapter. [2003 c 326 § 48; 1971 ex.s. c 181 § 4.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.050 Certified feed lot license—Fee—Issuance or renewal—Inspection prior to issuance of original license. (1) The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of eight hundred fifty dollars.

(2) Upon approval of the application by the director and compliance with the provisions of this chapter and rules adopted under this chapter, the applicant shall be issued a license or license renewal. The director shall conduct an inspection of all cattle and their corresponding ownership documents prior to issuing an original license. The inspection fee is the higher of the current inspection fee per head of cattle or time and mileage as set forth in RCW 16.57.220. [2003 c 326 § 49; 1997 c 356 § 5; 1997 c 356 § 4; 1994 c 46 § 23; 1994 c 46 § 14; 1993 c 354 § 3; 1979 c 81 § 2; 1971 ex.s. c 181 § 5.]

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.58.060 Certified feed lot license—Expiration—Late renewal. Certified feed lot licenses expire on June 30th following the date of issuance. If a person fails, refuses, or neglects to apply for renewal of a license by June 30th, the person's license shall expire. To reinstate a license, the person shall be assessed a late fee of twenty-five dollars which shall be added to the regular license fee and shall be paid

before the director may issue a license to the applicant. [2003 c 326 § 50; 1991 c 109 § 10; 1971 ex.s. c 181 § 6.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.070 Certified feed lot license—Denial, suspension, or revocation—Hearings. The director is authorized to deny, suspend, or revoke a license in accordance with the provisions of chapter 34.05 RCW if he or she finds that there has been a failure to comply with any requirement of this chapter or rules adopted under this chapter. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.05 RCW. [2003 c 326 § 51; 1989 c 175 § 54; 1971 ex.s. c 181 § 7.]

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.58.080 Livestock inspection—Facilities required—Help to be furnished. Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the director as to location and construction within the feed lot so that necessary livestock inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the director with sufficient help necessary to carry out inspections in the manner set forth above. [2003 c 326 § 52; 1971 ex.s. c 181 § 8.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.095 Inspection required for cattle not having inspection certificate. All cattle entering or reentering a certified feed lot must be inspected upon entry, unless they are accompanied by an inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the inspection certificate accompanying the cattle to the nearest inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule. [2003 c 326 § 53; 1991 c 109 § 11; 1979 c 81 § 6.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.100 Audits—Purpose. (1) The director shall conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. These audits shall be for the purpose of determining if the cattle correlate with the inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his or her assurance that inspected cattle were not commingled with uninspected cattle.

(2) The department shall conduct an audit to determine compliance with RCW 16.36.150 at the time of conducting audits under subsection (1) of this section. [2011 c 204 § 4; 2003 c 326 § 54; 1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.110 Records—Contents—Examination. All certified feed lots shall furnish the director with records as requested by the director on a monthly basis on all cattle entering or on feed in the certified feed lots and dispersed therefrom. These records must include a copy of each inspection certificate received and an itemized listing of all

cattle entering and leaving the feed lot. All requested records shall be subject to examination by the director for the purpose of maintaining the integrity of the identity of all the cattle. The director may make the examinations only during regular business hours or any working shift except in an emergency to protect the interest of the owners of the cattle. [2003 c 326 § 55; 1991 c 109 § 12; 1971 ex.s. c 181 § 11.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.120 Records required at each certified feed lot. The licensee shall maintain sufficient records as required by the director at each certified feed lot, if said licensee operates more than one certified feed lot. [1991 c 109 § 13; 1971 ex.s. c 181 § 12.]

16.58.130 Feed lots—Fee for each head of cattle handled—Failure to pay. Each licensee shall pay to the director a fee of twenty-five cents for each head of cattle handled through the licensee's feed lot. Payment of the fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. The director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments. [2006 c 156 § 2; 2003 c 326 § 56; 1997 c 356 § 7; 1997 c 356 § 6; 1994 c 46 § 24; 1994 c 46 § 15; 1993 c 354 § 4; 1991 c 109 § 14; 1979 c 81 § 4; 1971 ex.s. c 181 § 13.]

Effective date—2006 c 156: See note following RCW 16.57.220.

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.58.140 Disposition of fees. All fees provided for in this chapter shall be deposited in an account in the agricultural local fund and used for enforcing and carrying out the purpose and provisions of this chapter or chapter 16.57 RCW. [2003 c 326 § 57; 1979 c 81 § 5; 1971 ex.s. c 181 § 14.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.150 Situations when no inspection required—Fee—Suspension of license—Hearing. No inspection shall be required when cattle are moved or transferred from one certified feed lot to another when they are accompanied by satisfactory proof of ownership and there is no change of ownership or from a certified feed lot to a point within this state, or out of state where this state maintains inspection, for the purpose of immediate slaughter. Any change of ownership within a certified feed lot requires a livestock inspection unless the cattle are sent direct to slaughter. An inspection fee as provided for in RCW 16.57.220 is payable to the director by the seller of the cattle or through the licensee as an agent. Upon notice by the director to suspend a license under this section, a person may request a hearing under chapter 34.05 RCW. [2003 c 326 § 58; 1971 ex.s. c 181 § 15.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.160 Suspension of license awaiting investigation—Hearing. The director may, when a certified feed lot's conditions become such that the integrity of reports or records of the cattle in that feed lot becomes doubtful, immediately suspend the certified feed lot's license until such time

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as the director can conduct an investigation to verify the condition of reports or records.

Upon notice by the director to suspend a license under this section, a person may request a hearing under chapter 34.05 RCW. [2003 c 326 § 59; 1991 c 109 § 15; 1971 ex.s. c 181 § 16.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.170 General penalties—Subsequent offenses. (1) Except as provided in subsection (2) of this section, any person who violates the provisions of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 326 § 60; 2003 c 53 § 115; 1971 ex.s. c 181 § 17.]

Reviser's note: This section was amended by 2003 c 53 § 115 and by 2003 c 326 § 60, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2003 c 326: See RCW 16.57.902.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

16.58.900 Chapter as cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 181 § 18.]

16.58.910 Severability—1971 ex.s. c 181. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances shall not be affected. [1971 ex.s. c 181 § 19.]

Chapter 16.60 RCW FENCES

Sections

16.60.010	Lawful fence defined.
16.60.011	Other lawful fences.
16.60.015	Liability for damages—Restraint—Notice.
16.60.020	Partition fence—Reimbursement.
16.60.030	Partition fence—Erection—Notice.
16.60.040	Partition fence—Failure to build—Recovery of half of cost.
16.60.050	Partition fence—Hog fencing.
16.60.055	Fence on the land of another by mistake—Removal.
16.60.060	Partition fence—Discontinuance.
16.60.062	Assessing value of partition fence.
16.60.064	Impeachment of assessment—Damages.
16.60.075	Damages by breachy animals.
16.60.076	Proof.
16.60.080	Temporary gate across highway.
16.60.085	Temporary gate across highway—Auditor may grant permit.
16.60.090	Failure to remove gate—Penalty.
16.60.095	Fees.

16.60.010 Lawful fence defined. A lawful fence shall be of at least four barbed, horizontal, well-stretched wires, spaced so that the top wire is forty-eight inches, plus or minus four inches, above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. These wires shall be securely fastened to substantial posts set firmly in the ground as nearly equidistant as possible, but not more than twenty-four feet apart. If the posts are set more than sixteen feet apart, the wires shall be supported

by stays placed no more than eight feet from each other or from the posts. [1985 c 415 § 22; Code 1881 § 2488; 1873 p 447 § 1; 1871 p 63 § 1; 1869 p 323 § 1; RRS § 5441. FORMER PART OF SECTION: Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442, now codified as RCW 16.60.011.]

16.60.011 Other lawful fences. All other fences as strong and as well calculated as the fence described in RCW 16.60.010 shall be lawful fences. [1985 c 415 § 23; Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442. Formerly RCW 16.60.010, part.]

16.60.015 Liability for damages—Restraint—Notice. Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in RCW 16.60.010 and 16.60.011, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: PROVIDED, That such person shall provide notice as required under RCW 16.04.020 and 16.04.025: PROVIDED FURTHER, That such person shall have such fences examined and the damages assessed by three reliable, disinterested parties and practical farmers, within five days next after the trespass has been committed: AND, PROVIDED FURTHER, That if, before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded. [1985 c 415 § 26; Code 1881 § 2490; 1873 p 447 § 3; 1871 p 64 § 3; 1869 p 324 § 3; RRS § 5443.]

Trespassing animals—Restraint—Damages and costs: RCW 16.04.010.

16.60.020 Partition fence—Reimbursement. When any fence has been, or shall hereafter be, erected by any person on the boundary line of his or her land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his or her ground, he or she shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: PROVIDED, That in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his or her land fenced with hog fencing and uses the partition fence to make a hog enclosure of his or her land, then he or she shall pay to the one who owns said hog fence one-half of the value thereof. [2011 c 336 § 426; 1907 c 13 § 1; Code 1881 § 2491; 1873 p 448 § 4; 1871 p 65 § 4; 1869 p 324 § 4; RRS § 5444.]

Hog fencing: RCW 16.60.050.

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16.60.030 Partition fence—Erection—Notice. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land. [Code 1881 § 2492; 1873 p 448 § 5; 1871 p 65 § 5; 1869 p 325 § 5; RRS § 5445.]

16.60.040 Partition fence—Failure to build—Recovery of half of cost. If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [Code 1881 § 2493; 1873 p 448 § 6; 1871 p 65 § 6; 1869 p 325 § 6; RRS § 5446.]

16.60.050 Partition fence—Hog fencing. The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he or she may remove it at any time he or she desires: PROVIDED, That he or she leaves the fence in as good condition as it was when the hog fencing was by him or her attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his or her part of such fence, as to all materials used in said fence additional to said hog fencing. [2011 c 336 § 427; 1907 c 13 § 2; Code 1881 § 2494; 1873 p 449 § 7; 1871 p 65 § 7; 1869 p 325 § 7; RRS § 5447.]

Reimbursement—Hog fencing: RCW 16.60.020.

16.60.055 Fence on the land of another by mistake—Removal. When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: PROVIDED, That when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run. [Code 1881 § 2495; 1873 p 449 § 8; 1871 p 65 § 8; 1869 p 325 § 8; RRS § 5448. Formerly RCW 16.60.070.]

16.60.060 Partition fence—Discontinuance. When any party shall wish to lay open his or her inclosure, he or she shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures,

within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in RCW 16.60.055. [2011 c 336 § 428; Code 1881 § 2496; 1873 p 449 § 9; 1871 p 65 § 9; 1869 p 325 § 9; RRS § 5449.]

16.60.062 Assessing value of partition fence. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in RCW 16.60.020. [Code 1881 § 2497; 1873 p 449 § 10; 1871 p 66 § 10; 1869 p 326 § 10; RRS § 5450.]

16.60.064 Impeachment of assessment—Damages. Upon the trial of any cause occurring under the provisions of RCW 16.60.010 through 16.60.076, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages. [Code 1881 § 2498; 1873 p 449 § 11; 1871 p 66 § 11; 1869 p 326 § 11; RRS § 5451.]

16.60.075 Damages by breachy animals. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he or she shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal. [2011 c 336 § 429; Code 1881 § 2499; 1873 p 449 § 12; 1871 p 66 § 12; 1869 p 326 § 12; RRS § 5452. Formerly RCW 16.04.090, part. FORMER PART OF SECTION: Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453, now codified as RCW 16.60.076.]

16.60.076 Proof. In case of actions for damages under RCW 16.60.010 through 16.60.076, it shall be sufficient to prove that the fence was lawful when the break was made. [Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453. Formerly RCW 16.04.090, part.]

16.60.080 Temporary gate across highway. Whenever any inhabitant of this state shall have his or her fences removed by floods or destroyed by fire, the county commissioners of the county in which he or she resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him or her from depredations upon his or her crops until he or she can repair his or her fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [2011 c 336 § 430; Code 1881, Bagley's Supp., p 25 § 1; 1871 p 103 § 1; RRS § 5459. FORMER PART OF SECTION: Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460, now codified as RCW 16.60.085.]

16.60.085 Temporary gate across highway—Auditor may grant permit. It shall be lawful for the auditor of any county to grant such permit in vacation, but his or her license shall not extend past the next meeting of the commissioner's court. [2011 c 336 § 431; Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460. Formerly RCW 16.60.080, part.]

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16.60.090 Failure to remove gate—Penalty. Any person retaining a gate across the highway after his or her license shall expire, shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he or she shall retain the same, and it may be removed by the road supervisor, as an obstruction, at the cost of the person placing or keeping it upon the highway. [2011 c 336 § 432; Code 1881, Bagley's Supp., p 25 § 3; 1871 p 104 § 3; RRS § 5461.]

16.60.095 Fees. The fees of the auditor under RCW 16.60.080 through 16.60.095 shall be paid by the applicant. [Code 1881, Bagley's Supp., p 25 § 4; 1871 p 104 § 4.]

Chapter 16.65 RCW

PUBLIC LIVESTOCK MARKETS

Sections

16.65.005	Purpose.
16.65.010	Definitions.
16.65.015	Application of chapter—Exceptions.
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Exemptions from commission merchants' act: RCW 20.01.030.

16.65.005 Purpose. The purpose of this chapter is to ensure the orderly marketing of livestock, to ensure the financial stability of public livestock markets, and to protect persons who consign livestock to markets and sales. [2003 c 326 § 61.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.010 Definitions. For the purposes of this chapter:

(1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale or shipment. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his or her duly authorized representative.

(4) "Licensee" means any person licensed under the provisions of this chapter.

(5) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(7) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public: PROVIDED, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

(8) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

(9) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis.

(10) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership. [2003 c 326 § 62; 1983 c 298 § 1; 1961 c 182 § 1; 1959 c 107 § 1.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.015 Application of chapter—Exceptions. (1) Except under subsection (2) of this section, this chapter does not apply to:

(a) A farmer selling his or her own livestock.

(b) A farmers' cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale under the association's management and responsibility.

(c) A youth livestock organization such as 4-H, FFA, or other junior livestock group, when any class of livestock owned by the youth members is assembled and offered for sale at a special sale under the organization's management and responsibility.

(2) Any farmer, farmers' cooperative association, livestock breeders' association, or youth livestock organization under subsection (1) of this section, may, upon obtaining a permit from the director, conduct a public sale of his or her or its members livestock on an occasional or seasonal basis. Application for the permit shall be in writing to the director for his or her approval at least fifteen days before the proposed public sale is scheduled to be held. The application must be complete and accompanied by a nonrefundable fee of fifty dollars for each sale, except that the fee is waived for youth livestock organizations. The sale is subject to the livestock and health inspection requirements as provided in this chapter for sales at public livestock markets, unless otherwise prescribed by rule. [2003 c 326 § 63; 1983 c 298 § 2.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.020 Supervision of markets and special open consignment horse sales—Rules—Interference with director's duties. Public livestock markets and special open consignment horse sales shall be under the direction and supervision of the director, and the director may adopt those rules as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and rules adopted under this chapter. No person shall interfere with the director when he or she is performing or carrying out any duties imposed by this chapter or rules adopted under this chapter. [2003 c 326 § 64; 1983 c 298 § 5; 1959 c 107 § 2.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.030 Public livestock market license—Application—Contents—Fee—Public hearing. (1) No person shall operate a public livestock market without first having obtained a license from the director. Application for a license

shall be in writing on forms prescribed by the director, and shall include the following:

(a) A nonrefundable original license application fee of two thousand dollars.

(b) A legal description of the property upon which the public livestock market shall be located.

(c) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(d) A financial statement, audited by a certified or licensed public accountant, to determine whether or not the applicant meets the minimum net worth requirements, established by the director by rule, to construct and/or operate a public livestock market. If the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements. All financial statement information required by this subsection is confidential information and not subject to public disclosure.

(e) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(f) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales and the class of livestock that may be sold on these days.

(g) Projected source and quantity of livestock anticipated to be handled.

(h) Projected gross dollar volume of business to be carried on, at, or through the public livestock market during the first year's operation.

(i) Facts upon which is based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(j) Other information as the director may require by rule.

(2) If the director determines that the applicant meets all the requirements of subsection (1) of this section, the director shall conduct a public hearing as provided by chapter 34.05 RCW, and shall grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to the requirements of this section and giving reasonable consideration to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application;

(b) The geographical area that will be affected;

(c) The conflict, if any, with sales days already allocated in the area;

(d) The amount and class of livestock available for marketing in the area;

(e) Buyers available to the proposed market; and

(f) Any other conditions affecting the orderly marketing of livestock.

(3) Before a license is issued to operate a public livestock market, the applicant must:

(a) Execute and deliver to the director a surety bond as required under RCW 16.65.200;

(b) Provide evidence of a custodial account, as required under RCW 16.65.140, for the consignor's proceeds;

(c) Pay the appropriate license fee; and

(d) Provide other information required under this chapter and rules adopted under this chapter. [2003 c 326 § 65; 1995 c 374 § 54; (1994 c 46 § 21 repealed by 1995 c 374 § 55); 1994 c 46 § 12; 1993 c 354 § 1; 1991 c 17 § 1; 1979 ex.s. c 91 § 1; 1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.65.037 License—Restrictions—Fees. (1) Any license issued under the provisions of this chapter shall only be valid at the location and for the sales day or days for which the license was issued.

(2) The license fee shall be based on the average gross sales volume per official sales day of a market in the previous twelve months or, for a new market, the projected average gross sales per official sales day of the market during its first year's operation.

(a) The license fee for markets with an average gross sales volume up to and including ten thousand dollars is one hundred fifty dollars.

(b) The license fee for markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars is three hundred dollars.

(c) The license fee for markets with an average gross sales volume over fifty thousand dollars is four hundred fifty dollars.

(3) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each public livestock market, and each application shall be accompanied by the appropriate license fee. [2003 c 326 § 66; 1997 c 356 § 9; 1997 c 356 § 8; 1995 c 374 § 57.]

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.65.040 Public livestock market license—Expiration—Renewal—Penalty. (1) All public livestock market licenses provided for in this chapter expire on March 1st subsequent to the date of issue.

(2) Application for renewal of a public livestock market license shall be in writing on forms prescribed by the director, and shall include:

(a) All information under RCW 16.65.030(1) (d), (e), and (f);

(b) The gross dollar volume of business carried on, at, or through the applicant's public livestock market in the twelve-month period prior to the application for renewal of the license;

(c) Other information as the director may require by rule; and

(d) The appropriate license fee.

(3) If any person fails, refuses, or neglects to apply for a renewal of a preexisting license by March 1st, the person's license shall expire. To reinstate a license, the person shall pay a penalty of twenty-five dollars, which shall be added to the regular license fee, before the license may be reinstated by the director. [2003 c 326 § 67; 1983 c 298 § 6; 1979 ex.s. c 91 § 2; 1959 c 107 § 4.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid. (1) A person shall not operate a special open consignment horse sale without first obtaining a license from the director. The application for the license shall include:

(a) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(b) The specific date and exact location of the proposed sale;

(c) Projected quantity and approximate value of horses to be handled; and

(d) Such other information as the director may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued. [2003 c 326 § 68; 1983 c 298 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.044 Public livestock market—Open consignment horse sale—Consignor's name. It is lawful for the operator of a public livestock market or an open consignment horse sale, upon receiving a request to do so, to allow the announcement of the correct and accurate name of the consignor of any cattle or horses being presented for sale to potential buyers. [1991 c 17 § 5.]

16.65.050 Disposition of fees. All fees provided for under this chapter shall be deposited in an account in the agricultural local fund and used for enforcing and carrying out the purpose and provisions of this chapter and chapter 16.57 RCW. [2003 c 326 § 69; 1959 c 107 § 5.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.060 License to be posted. The licensee's license shall be posted conspicuously in the main office of such licensee's public livestock market or special open consignment horse sale. [1983 c 298 § 7; 1959 c 107 § 6.]

16.65.080 Denial, suspension, revocation of license—Reasons—Hearing. (1) The director may deny, suspend, or revoke a license when the director finds that a licensee (a) has misrepresented titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock; (b) has attempted payment to a consignor or the department by a check the licensee knows not to be backed by sufficient funds to cover such check; (c) has violated any of the provisions of this chapter or rules adopted under this chapter; (d) has violated any laws of the state that require inspection of livestock for health or ownership purposes; (e) has violated any condition of the bond, as provided in this chapter.

(2) Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW.

(3) The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded, and may be taken by deposition under such rules as the director may prescribe. [2003 c 326 § 70; 1985 c 415 § 9; 1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

Effective dates—2003 c 326: See RCW 16.57.902.

Orders—Appeal: RCW 16.65.450.

16.65.090 Livestock inspection—Consignor's fee—Inspection fee. The director shall provide for livestock inspection. When livestock inspection is required the licensee shall collect from the consignor and pay to the department an inspection fee, as provided by law, for each animal inspected. However, if in any one sale day the total fees collected for inspection do not exceed one hundred dollars, then the licensee shall pay one hundred dollars for the inspection services. [2003 c 326 § 71; 1997 c 356 § 11; 1997 c 356 § 10; 1994 c 46 § 22; 1994 c 46 § 13; 1993 c 354 § 2; 1983 c 298 § 8; 1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.65.100 Livestock inspection—Purchaser's fee. The licensee of each public livestock market or special open consignment horse sale shall collect from any purchaser of livestock requesting inspection a fee as provided by law for each animal inspected. This fee shall be in addition to the fee charged to the consignor for inspection and shall not apply to the minimum fee chargeable to the licensee. [2003 c 326 § 72; 1983 c 298 § 9; 1959 c 107 § 10.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.120 Disposition of proceeds of sale—Limitations on licensee. A licensee shall not, except as provided in this chapter, pay the net proceeds or any part thereof arising from the sale of livestock consigned to the said licensee for sale, to any person other than the consignor of such livestock except upon an order from a court of competent jurisdiction, unless (1) such licensee has reason to believe that such person is the owner of the livestock; (2) such person holds a valid unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock. [1959 c 107 § 12.]

16.65.130 Unlawful use of consignor's net proceeds. It shall be unlawful for the licensee to use for his or her own purposes consignor's net proceeds, or funds received by such licensee to purchase livestock on order, through recourse to the so-called "float" in the bank account, or in any other manner. [2011 c 336 § 433; 1959 c 107 § 13.]

16.65.140 Custodial account for consignor's proceeds—Authorized withdrawals—Accounts and records. Each licensee shall establish a custodial account for con-

signor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. The account shall be drawn on only for the payment of net proceeds to the consignor, or other person or persons of whom the licensee has knowledge is entitled to the proceeds, and to obtain from those proceeds only the sums due the licensee as compensation for the services as are set out in the posted tariffs, and for the sums as are necessary to pay all legal charges against the consignment of livestock which the licensee in the capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep those accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the director and reflect compliance with the requirements of this section. [2003 c 326 § 73; 1971 ex.s. c 192 § 4; 1959 c 107 § 14.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.150 Penalty for failure to disclose unsatisfied lien, mortgage. The delivery of livestock, for the purpose of sale, by any consignor or vendor to a public livestock market or special open consignment horse sale without making a full disclosure to the agent or licensee of such public livestock market or special open consignment horse sale of any unsatisfied lien or mortgage upon such livestock shall constitute a gross misdemeanor. [1983 c 298 § 10; 1959 c 107 § 15.]

16.65.160 Delivery of proceeds and invoice to consignor or shipper. The licensee shall deliver the net proceeds together with an invoice to the consignor or shipper within twenty-four hours after the sale or by the end of the next business day if the licensee is not on notice that any other person or persons have a valid interest in the livestock. [1959 c 107 § 16.]

16.65.170 Records of licensee—Contents. The licensee shall keep accurate records which shall be available for inspection to all parties directly interested therein, and the records shall contain the following information:

- (1) The date on which each consignment of livestock was received and sold.
- (2) The name and address of the buyer and seller of the livestock.
- (3) The number and species of livestock received and sold.
- (4) The marks and brands on the livestock.
- (5) All statements of warranty or representations of title material to, or upon which, any sale is consummated.
- (6) The gross selling price of the livestock with a detailed list of all charges deducted therefrom.

These records shall be kept by the licensee for one year subsequent to the receipt of such livestock. [2003 c 326 § 74; 1967 c 192 § 1; 1959 c 107 § 17.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.180 Unjust, unreasonable, discriminatory rates or charges prohibited. All rates or charges made for any stockyard services furnished at a public livestock market

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or special open consignment horse sale shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. [1983 c 298 § 11; 1959 c 107 § 18.]

16.65.190 Schedule of rates and charges. No person shall operate a public livestock market or special open consignment horse sale unless that person has filed a schedule with the application for license to operate a public livestock market or special open consignment horse sale. The schedule shall show all rates and charges for stockyard services to be furnished at the public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, and shall plainly state all rates and charges in such detail as the director may require, and shall state any rules which in any manner change, affect, or determine any part of the aggregate of the rates or charges, or the value of the stockyard services furnished. The director may determine and prescribe the form and manner in which the schedule shall be prepared, arranged, and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the director and to the public filed and posted as set forth under this section, which shall plainly state the changes proposed to be made and the time the changes will go into effect.

(3) No licensee shall charge, demand, or collect a greater or a lesser or a different compensation for a service than the rates and charges specified in the schedule filed with the director and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at a public livestock market or special open consignment horse sale any stockyard services except as are specified in the schedule. [2003 c 326 § 75; 1983 c 298 § 12; 1959 c 107 § 19.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.200 Licensee's bond to operate market or special open consignment horse sale. Before the license is issued to operate a public livestock market or special open consignment horse sale, the applicant shall execute and deliver to the director a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a standard form and approved by the director as to terms and conditions. The bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted under this chapter. The bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale: PROVIDED, That if the applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and the applicant fur-

nishes the director with a bond approved by the United States secretary of agriculture, the director may accept the bond and its method of termination in lieu of the bond provided for herein and issue a license if the applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of the bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until the license of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on the bond upon compliance with the provisions of RCW 19.72.110 concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service, and unless the principal shall before the expiration of this period, file a new bond, the director shall immediately cancel the principal's license. [2003 c 326 § 76; 1983 c 298 § 13; 1971 ex.s. c 192 § 5; 1961 c 182 § 4. Prior: 1959 c 107 § 20.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.210 Licensee's bond to operate market—Amount determined by prior business operations—Minimum amount. The sum of the bond to be executed by an applicant for a public livestock market license shall be determined in the following manner:

(1) Determine the dollar volume of business carried on, at, or through, such applicant's public livestock market in the twelve-month period prior to such applicant's application for a license.

(2) Divide such dollar volume of business by the number of official sale days granted such applicant's public livestock market, as herein provided, in the same twelve-month period provided for in subsection (1).

(3) Bond amount shall be that amount obtained by the formula in subsection (2) except that it shall not be an amount less than ten thousand dollars and if that amount shall exceed fifty thousand then that portion above fifty thousand shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest five thousand figure above that arrived at in the formula. [1971 ex.s. c 192 § 6; 1959 c 107 § 21.]

16.65.220 Licensee's bond to operate market—Amount when no prior business operations—Minimum and maximum amount. If the application for a license to operate a public livestock market is from a new public livestock market which has not operated in the past twelve-month period, the director shall determine a bond, in a reasonable sum, that the applicant shall execute in favor of the state, which shall not be less than ten thousand dollars nor greater than twenty-five thousand dollars: PROVIDED, That the director may at any time, upon written notice, review the licensee's operations and determine whether, because of increased or decreased sales, the amount of the bond should be altered. [1971 ex.s. c 192 § 7; 1959 c 107 § 22.]

16.65.230 Licensee's bond to operate market—One bond for each market. Any licensee operating more than one public livestock market shall execute a bond, as herein provided, for each such licensed public livestock market. [1959 c 107 § 23.]

16.65.232 Licensee's bond to operate special open consignment horse sale—Amount determined by estimate of business—Minimum amount. The sum of the bond to be executed by an applicant for a special open consignment horse sale license shall be determined by estimating the dollar volume of business to be carried on, at, or through the applicant's proposed special open consignment horse sale. The bond amount shall be that amount estimated as the applicant's dollar volume of business. However, the bond shall not be in an amount less than ten thousand dollars. If the amount exceeds fifty thousand dollars, then that portion above fifty thousand dollars shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest greater five thousand dollar figure. [1983 c 298 § 4.]

16.65.235 Cash or other security in lieu of surety bond—Rules. In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules necessary for the administration of such security. [2003 c 326 § 77; 1973 c 142 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.240 Action on bond—Fraud of licensee. Any vendor or consignor creditor claiming to be injured by the fraud of any licensee may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud. [1959 c 107 § 24.]

16.65.250 Action on bond—Failure to comply with chapter. The director or any vendor or consignor creditor may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. [1959 c 107 § 25.]

16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties. In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale, as evidenced by a verified complaint filed with the director, the director may proceed immediately to ascertain the names and addresses of all vendor or consignor creditors of the licensee, together with the amounts due and owing to them and each of them by the licensee, and shall request all vendor and consignor creditors to file a verified statement of their respective claims with the director. This request shall be addressed to each known vendor or consignor creditor at his or her last known address. [2003 c 326 § 78; 1983 c 298 § 14; 1959 c 107 § 26.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim. If a vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the director his or her verified claim as requested by the director within sixty days from the date of such request, the director shall be relieved of further duty or action on behalf of the producer or consignor creditor. [2003 c 326 § 79; 1959 c 107 § 27.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available. Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all vendor and consignor creditors, the director, after exerting due diligence and making reasonable inquiry to secure the information from all reasonable and available sources, may make demand on the bond on the basis of information then in his or her possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [2003 c 326 § 80; 1959 c 107 § 28.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.290 Licensee's failure to pay vendor, consignor—Settlement, compromise of claims—Demand on bond—Discharge. Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1959 c 107 § 29.]

16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file. Upon the refusal of the surety company to pay the demand, the director may bring an action on the bond in behalf of vendor and consignor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond. Immediately upon the recovery in any action on the bond the licensee shall file a new bond. Upon failure to file the new bond within ten days, such a failure shall constitute grounds for the suspension or revocation of the license. [2003 c 326 § 81; 1959 c 107 § 30.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.310 Licensee's failure to pay vendor, consignor—Settlement, compromise—Creditors share—Priority of state's claim. In any settlement or compromise by the director with a surety company as provided in RCW 16.65.290, where there are two or more consignor and/or vendor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage: PROVIDED, That the claims of the state and the department which may accrue from the conduct of the lic-

ensee's public livestock market shall have priority over all other claims. [1959 c 107 § 31.]

16.65.320 Investigations by director—Complaints. For the purpose of enforcing the provisions of this chapter, the director on the director's own motion or upon the verified complaint of any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, shall have full authority to make any and all necessary investigations. The director is empowered to administer oaths of verification of such complaints. [1985 c 415 § 10; 1959 c 107 § 32.]

16.65.330 Investigations—Powers of director. For the purpose of making investigations as provided for in RCW 16.65.320, the director may enter a public livestock market and examine any records required under the provisions of this chapter. The director shall have full authority to issue subpoenas requiring the attendance of witnesses before him or her, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder. [2011 c 336 § 434; 1959 c 107 § 33.]

16.65.340 Testing, examination, etc., of livestock for disease—Veterinarian employed by the market. The director shall, when livestock is sold, traded, exchanged, or handled at or through a public livestock market, require such testing, treating, identifying, examining and recordkeeping of such livestock by a Washington state licensed and accredited veterinarian employed by the market as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, pseudorabies, or any other infectious, contagious, or communicable disease among the livestock of this state. The state veterinarian or his or her authorized representative may conduct additional testing and examinations for the same purpose. [2003 c 326 § 82; 1967 c 192 § 2; 1959 c 107 § 34.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.350 Examinations—Sanitary and health practices and standards—Rules. The director shall adopt rules regarding sanitary practices, health practices and standards, and the examination of animals at public livestock markets. [2003 c 326 § 83; 1959 c 107 § 35.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.360 Facilities—Sanitation—Requirements. Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved sewage system: PROVIDED, That the director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(2) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(3) All yards, chutes and pens used in handling livestock shall be constructed of such materials which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(4) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(5) All swine pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(7) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) hard surfaced with concrete or similar impervious material and shall be kept in good repair;

(b) provided with separate watering facilities;

(c) painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate;

(d) provided with a tight board fence not less than five and one-half feet high;

(e) cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director. [1959 c 107 § 36.]

16.65.370 Watering, feeding facilities—Unlawful acts. Pens used to hold livestock for a period of twenty-four hours or more in a public livestock market shall have watering and feeding facilities for livestock held in such pens. It shall be unlawful for a public livestock market to hold livestock for a period longer than twenty-four hours without feeding and watering such livestock. An operator of a public livestock market may also refuse to accept the consignment of any livestock that the licensee may believe to have been inadequately fed or otherwise inadequately cared for prior to the delivery of the livestock in question to the public livestock market. [1991 c 17 § 2; 1959 c 107 § 37.]

16.65.380 Adequate facilities and space required for veterinarians to function. Public livestock market facilities shall include adequate space and facilities necessary for market, federal, or state veterinarians to properly carry out their functions as prescribed by law and rules adopted under law or as prescribed by applicable federal law or regulation. [2003 c 326 § 84; 1959 c 107 § 38.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.390 Adequate space and facilities required for livestock inspectors and veterinarians to function. Public livestock market facilities shall include space and facilities necessary for livestock inspectors and veterinarians to properly carry out their duties, as provided by law and rules adopted under law, in a safe and expeditious manner. [2003 c 326 § 85; 1959 c 107 § 39.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.400 Weighing of livestock at public livestock market. (1) Each public livestock market licensee shall maintain and operate approved weighing facilities for the weighing of livestock at such licensee's public livestock market.

(2) All dial scales used by the licensee shall be of adequate size to be readily visible to all interested parties and shall be equipped with a mechanical weight recorder.

(3) All beam scales used by the licensee shall be equipped with a balance indicator, a weigh beam and a mechanical weight recorder, all readily visible to all interested parties.

(4) All scales used by the licensee shall be checked for balance at short intervals during the process of selling and immediately prior to the beginning of each sale day.

(5) The scale ticket shall have the weights mechanically imprinted upon the tickets when the weigh beam is in balance during the process of weighing, and shall be issued in triplicate, for all livestock weighed at a public livestock market. A copy of the weight tickets shall be issued to the buyer and seller of the livestock weighed. [2003 c 326 § 86; 1983 c 298 § 15; 1961 c 182 § 5; 1959 c 107 § 40.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.410 Packer's interest in market limited. It shall be unlawful for a packer to own or control more than a twenty percent interest in any public livestock market, directly or indirectly through stock ownership or control, or otherwise by himself or herself or through his or her agents or employees. [2011 c 336 § 435; 1959 c 107 § 41.]

16.65.420 Application for change of or additional sales days, special sales—Considerations for allocation. (1) Any application for a change of sales day or days or additional sales day or days for an existing salesyard shall be subject to approval by the director, subsequent to a hearing and the director is hereby authorized to approve these days and class of livestock which may be sold on these days. In considering the approval or denial of these sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The geographical area which will be affected;

(b) The conflict, if any, with sales days already allocated in the area;

(c) The amount and class of livestock available for marketing in the area;

(d) Buyers available to such market;

(e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale. Each application must be accompanied by a nonrefundable fee of fifty dollars.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the director shall, subsequent to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule. [2003 c 326 § 87; 1991 c 17 § 3; 1963 c 232 § 16; 1961 c 182 § 6. Prior: 1959 c 107 § 42.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.424 Additional sales days limited to sales of horses and/or mules. The director has the authority to grant a licensee an additional sales day, or days, limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his or her public livestock market if the facilities are approved by the director as being adequate for the protection of the health and safety of the horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable. [2003 c 326 § 88; 1963 c 232 § 19.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.430 Information and records available to director and news services. Information and records of the licensee that are necessary for the compilation of adequate reports on the marketing of livestock shall be made available to the director or any news service, publishing or broadcasting such market reports. [1959 c 107 § 43.]

16.65.440 Penalty. (1) Except as provided in subsection (2) of this section, any person who violates any provisions or requirements of this chapter or rules adopted by the director pursuant to this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. [2012 c 25 § 3. Prior: 2003 c 326 § 89; 2003 c 53 § 116; 1959 c 107 § 44.]

Effective dates—2003 c 326: See RCW 16.57.902.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

16.65.445 Public hearings. The director shall hold public hearings upon any proposal to adopt any new or amended rules and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other adjudicative proceeding, and shall comply in all respects with chapter 34.05 RCW, the Administrative Procedure Act. [2003 c 326 § 90; 1989 c 175 § 55; 1961 c 182 § 7.]

Effective dates—2003 c 326: See RCW 16.57.902.

Additional notes found at www.leg.wa.gov

16.65.450 Orders—Appeal. Any licensee or applicant who feels aggrieved by an order of the director may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo. [1991 c 17 § 4; 1959 c 107 § 46.]

(2012 Ed.)

16.65.900 Severability—1959 c 107. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 107 § 45.]

Chapter 16.67 RCW

WASHINGTON STATE BEEF COMMISSION

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16.67.010 Short title. This chapter shall be known and may be cited as the Washington state beef commission act. [1969 c 133 § 1.]

16.67.030 Definitions. For the purpose of this chapter: (1) "Commission" means the Washington state beef commission.

(2) "Director" means the director of agriculture of the state of Washington or an appointed representative.

(3) "Ex officio members" means those advisory members of the commission who do not have a vote.

(4) "Department" means the department of agriculture of the state of Washington.

(5) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(6) "Beef producer" means any person who raises, breeds, grows, or purchases cattle or calves for beef production.

(7) "Dairy (beef) producer" means any person who raises, breeds, grows, or purchases cattle for dairy production and who is actively engaged in the production of fluid milk.

(8) "Feeder" means any person actively engaged in the business of feeding cattle and usually operating a feed lot.

(9) "Producer" means any person actively engaged in the cattle industry including beef producers and dairy (beef) producers.

(10) "Washington cattle" shall mean all cattle owned or controlled by affected producers and located or sold in the state of Washington.

(11) "Meat packer" means any person operating a slaughtering establishment subject to inspection under a federal meat inspection act.

(12) "Livestock salesyard operator" means any person licensed to operate a cattle auction market or salesyard under the provisions of chapter 16.65 RCW as enacted or hereafter amended.

(13) "Mail" or "send" for purposes of any notice relating to rule making means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail. [2002 c 313 § 80; 1999 c 291 § 30; 1969 c 133 § 2.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.035 Regulating beef and beef products—Existing comprehensive scheme—Laws applicable. The history, economy, culture, and the future of Washington state's agriculture involves the beef industry. In order to develop and promote beef and beef products as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That the Washington state beef commission is created;

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its beef and beef products be properly promoted by (a) enabling the beef industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of beef and beef products they produce; and (b) working to stabilize the beef industry by increasing consumption of beef and beef products within the state, the nation, and internationally;

(3) That beef producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the beef producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the beef industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that beef and beef products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of beef products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beef and beef products, and in reference to the various cuts and grades of beef and the uses to which each should be put;

(d) Increase the knowledge of the health-giving qualities and dietetic value of beef products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beef and beef products;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the beef industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the beef industry include the:

(a) Beef promotion and research act of 1985, U.S.C. Title 7, chapter 62;

(b) Beef promotion and research, 7 C.F.R., Part 1260;

(c) Agricultural marketing act, 7 U.S.C., section 1621;

(d) USDA meat grading, certification, and standards, 7 C.F.R., Part 54;

(e) Mandatory price reporting, 7 C.F.R., Part 57;

(f) Grazing permits, 43 C.F.R., Part 2920;

(g) Capper-Volstead act, U.S.C. Title 7, chapters 291 and 292;

(h) Livestock identification under chapter 16.57 RCW and rules;

(i) Organic products act under chapter 15.86 RCW and rules;

(j) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(k) Washington food processing act under chapter 69.07 RCW and rules;

(l) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(m) Animal health under chapter 16.36 RCW and rules; and

(n) Weights and measures under chapter 19.94 RCW and rules. [2011 c 103 § 34; 2002 c 313 § 79.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.040 Beef commission created—Generally. There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of two beef producers, two dairy (beef) producers, two feeders, one livestock salesyard operator, one meat packer, and the director, who shall be a voting member. If an otherwise voting member is elected as the chair of the commission, the member may, during the member's term as chair of the commission, cast a vote as a member of the commission only to break a tie vote. If the commission so chooses, there may be one additional nonvoting member in an advisory capacity appointed by the members of the commission for such a term as the members may set.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he or she represents for a period of five years, and has during that period

derived a substantial portion of his or her income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office. [2003 c 396 § 33; 2000 c 146 § 1; 1997 c 363 § 1; 1993 c 40 § 1; 1991 c 9 § 1; 1969 c 133 § 3.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Additional notes found at www.leg.wa.gov

16.67.051 Designation of positions—Terms. Commencing on July 1, 1993, the appointive positions on the commission shall be designated as follows: The beef producers shall be designated position one and position six; the dairy (beef) producers shall be designated position two and position seven; the feeders shall be designated position three and position eight; the livestock salesyard operator shall be designated position four; and the meat packer shall be designated position five.

The initial terms of positions one and four shall terminate July 1, 1994; positions two and five shall terminate July 1, 1995; and position three shall terminate July 1, 1996. The initial terms of position six shall terminate July 1, 1998; position seven shall terminate July 1, 1999; and position eight shall terminate July 1, 2000. The regular term of office of subsequent appointees shall be three years from the date of appointment and until their successors are appointed. [1997 c 363 § 2; 1993 c 40 § 3.]

Additional notes found at www.leg.wa.gov

16.67.060 Director to appoint members—Recommendations by industry. The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made to him or her by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission.

Commencing on June 1, 1993, and by June 1 of each subsequent year, organizations under this section shall make a recommendation as required, to the director of a person to serve on the commission. [1993 c 40 § 4; 1991 c 9 § 3; 1969 c 133 § 5.]

Additional notes found at www.leg.wa.gov

16.67.070 Vacancies—Compensation and travel expenses. (1) In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of such position shall be filled by the director forthwith.

(2) Each member of the commission shall be compensated in accordance with RCW 43.03.230.

(3) Each member or employee shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and

43.03.060. [2002 c 313 § 81; 1991 c 9 § 4; 1984 c 287 § 19; 1975-76 2nd ex.s. c 34 § 22; 1969 c 133 § 6.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

16.67.080 Commission records as evidence. Copies of the proceedings, records, and acts of the commission, when certified by the secretary of the commission and authenticated by the commission seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1969 c 133 § 7.]

16.67.090 Powers and duties—Rule making. The powers and duties of the commission shall include the following:

(1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(2) To elect a chair and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the review of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.05 RCW, except that rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, the provisions of chapter 19.85 RCW, the regulatory fairness act, and the provisions of RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books, and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington;

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys, and other financial transactions made and done pursuant to this chapter. Such records, books, and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor, and the commission. On such years and in such event the state auditor is unable to audit the records, books, and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions, or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter; and

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states. [2011 c 336 § 436; 2002 c 313 § 82; 2000 c 146 § 2; 1982 c 81 § 3; 1969 c 133 § 8.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.091 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of its affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of its affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning its affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 34.]

Effective date—2003 c 396: See note following RCW 15.66.030.

16.67.093 Subpoenas. The commission has the power to subpoena witnesses and to issue subpoenas for the production of any books, records, or documents of any kind for the purpose of enforcing this chapter. [2002 c 313 § 85.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.095 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 35.]

Effective date—2003 c 396: See note following RCW 15.66.030.

16.67.097 Reimbursement for costs. (1) The commission shall reimburse the director for necessary costs for services conducted on behalf of the commission under this chapter.

(2) The commission may enter into an agreement with the director to administer this chapter or chapter 34.05 RCW. [2002 c 313 § 86.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.100 Meetings—Notice. The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the commission.

The commission shall hold an annual meeting. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the commission at least ten days prior to the meeting by public notice of such meeting published in newspapers of general circulation in the state of Washington, by radio and press releases and through trade publications.

The commission shall establish by resolution, the time, place and manner of calling special meetings of the commission with reasonable notice to the members: PROVIDED, That, the notice of any special meeting may be waived by a waiver thereof by each member of the commission. [2000 c 146 § 3; 1969 c 133 § 9.]

16.67.110 Promotional programs, research, rate studies, labeling. The commission shall provide for programs designed to increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the

quality, value, sale or use of any other agricultural commodity;

(2) Provide for research to develop and discover the health, food, therapeutic and dietetic value of beef and beef products thereof;

(3) Make grants to research agencies for financing studies, including funds for the purchase or acquisition of equipments and facilities, in problems of beef production, processing, handling and marketing;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed. [2000 c 146 § 4; 1969 c 133 § 10.]

16.67.120 Levy of assessment—Collections—Federal orders. (1) There is hereby levied an assessment of one dollar per head on all Washington cattle sold in this state or elsewhere to be paid by the seller at the time of sale: PROVIDED, That if such sale is accompanied by a brand inspection by the department such assessment may be collected at the same time, place and in the same manner as brand inspection fees. Such fees may be collected by the livestock services division of the department and transmitted to the commission: PROVIDED FURTHER, That, if such sale is made without a brand inspection by the department the assessment shall be paid by the seller and transmitted directly to the commission by the fifteenth day of the month following the month the transaction occurred.

(2) The procedures for collecting all state and federal assessments under this chapter shall be as required by the federal order and as described by rules adopted by the commission. [2002 c 313 § 83; 2000 c 146 § 5; 1987 c 393 § 11; 1986 c 190 § 2; 1982 c 47 § 1; 1975 1st ex.s. c 93 § 1; 1969 c 133 § 11.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.122 Additional assessment—National beef promotion and research program—Contingency. In addition to the assessment authorized pursuant to RCW 16.67.120, the commission has the authority to collect an additional assessment of fifty cents per head for cattle subject to assessment by federal order for the purpose of providing funds for a national beef promotion and research program. The manner in which this assessment will be levied and collected shall be established by rule. The authority to collect this assessment shall be contingent upon the implementation of federal legislation providing for a national beef promotion and research program and the establishment of the assessment requirement to fund its activities. [2002 c 313 § 84; 2000 c 146 § 6; 1986 c 190 § 1.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.123 Transfer of cattle by meat packer as sale. The transfer of cattle owned by a meat packer from a feed lot

(2012 Ed.)

to a slaughterhouse for slaughter shall be deemed a sale of such cattle for the purpose of chapter 16.67 RCW. Such packer shall pay directly to the beef commission the same assessment as required of all other cattle owners selling cattle. [1971 c 64 § 1.]

16.67.130 Assessments personal debt—Delinquent charge—Civil action to collect. Any due and payable assessment levied under the provisions of this chapter shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable on the fifteenth day of the month following the month the transaction occurred. In the event any such person fails to pay the full amount within such time, the commission shall add to such unpaid assessment an amount of ten percent of the unpaid assessment to defray the cost of collecting the same. In the event of failure of such person to pay such due and payable assessment, the commission may bring civil action against such person in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon and any other additional necessary reasonable costs including attorneys' fees. Such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [2000 c 146 § 7; 1969 c 133 § 12.]

16.67.140 Livestock purchasers to provide list of sellers to commission. The commission may adopt regulations requiring the purchasers of livestock subject to the assessments under this chapter, to furnish the commission with the names of persons from whom such livestock was purchased. Refusal or failure to furnish the commission with such a list shall constitute a misdemeanor. [1969 c 133 § 13.]

16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member officer, employee, or agent of the commission in his or her individual capacity. The members of the commission including employees of the commission shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member. [2011 c 336 § 437; 1969 c 133 § 15.]

16.67.180 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 220; 2002 c 313 § 71.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.190 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 77.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.195 Costs of implementing RCW 16.67.091. The costs incurred by the department associated with the implementation of RCW 16.67.091 shall be paid for by the commission. [2003 c 396 § 36.]

Effective date—2003 c 396: See note following RCW 15.66.030.

16.67.900 Liberal construction—1969 c 133. This chapter shall be liberally construed. [1969 c 133 § 20.]

16.67.910 Severability—1969 c 133. If any provisions hereof are declared invalid, the validity of the remainder hereof of the applicability thereof to any other person, circumstances or thing shall not be affected thereby. [1969 c 133 § 17.]

16.67.920 Effective date—1969 c 133. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1969. [1969 c 133 § 21.]

**Chapter 16.68 RCW
DISPOSAL OF DEAD ANIMALS**

Sections

- 16.68.010 Definitions.
- 16.68.030 Sale, gift, or conveyance prohibited—Exceptions.
- 16.68.040 License required of rendering plants and independent collectors.
- 16.68.050 Rendering plant license fee.
- 16.68.060 Independent collector license fee.
- 16.68.070 Substation or places of transfer license fee.
- 16.68.080 Expiration of license—Revocation.
- 16.68.090 Applications for license.

- 16.68.100 Procedure upon application—Inspection of premises.
- 16.68.110 Duty of licensees as to premises.
- 16.68.120 Duty of licensees—Standards.
- 16.68.130 Right of access to premises and records.
- 16.68.140 Unlawful possession of horse meat—Exceptions.
- 16.68.150 Feeding of carcasses to swine unlawful—Exception.
- 16.68.160 Disposition of fees.
- 16.68.170 Rules and regulations.
- 16.68.180 Penalty for violations.
- 16.68.190 Bait for trapping purposes—Exception.

16.68.010 Definitions. For the purposes of this chapter, unless clearly indicated otherwise by the context:

(1) "Carcass" means all parts, including viscera, of a dead meat food animal;

(2) "Dead animal" means the body of a meat food animal, or any part or portion thereof: PROVIDED, That the following dead animals are exempt from the provisions of this chapter:

(a) Edible products from a licensed slaughtering establishment;

(b) Edible products where the meat food animal was slaughtered under farm slaughter permit;

(c) Edible products where the meat food animal was slaughtered by a bona fide farmer on his or her own ranch for his or her own consumption;

(d) Hides from meat food animals that are properly identified as to ownership and brands;

(3) "Director" means the director of agriculture;

(4) "Independent collector" means any person who does not own a licensed rendering plant within the state of Washington but is properly equipped and licensed to transport dead animals or packing house refuse to a specified rendering plant.

(5) "Meat food animal" means cattle, horses, mules, asses, swine, sheep, and goats;

(6) "Person" means any individual, firm, corporation, partnership, or association;

(7) "Place of transfer" means an authorized reloading site for the direct transfer of dead animals or packing house refuse from the vehicle making original pickup to the line vehicle that will transport the dead animals or packing house refuse to a specified licensed rendering plant;

(8) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other by-product whatsoever;

(9) "Substation" means a properly equipped and authorized concentration site for the temporary storage of dead animals or packing house refuse pending final delivery to a licensed rendering plant. [2011 c 336 § 438; 1949 c 100 § 1; Rem. Supp. 1949 § 3142-1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

16.68.030 Sale, gift, or conveyance prohibited—Exceptions. It is unlawful for any person to sell, offer for sale, or give away a dead animal or convey the same along any public road or land not his or her own: PROVIDED, That dead animals may be sold or given away to and legally transported on highways by a person having an unrevoked, annual license to operate a rendering plant or by a person

having an unrevoked, annual license to operate as an independent collector. [2011 c 336 § 439; 1949 c 100 § 3; Rem. Supp. 1949 § 3142-3.]

16.68.040 License required of rendering plants and independent collectors. It is unlawful for any person to operate a rendering plant or act as an independent collector without first obtaining a license from the director. [1949 c 100 § 4; Rem. Supp. 1949 § 3142-4.]

16.68.050 Rendering plant license fee. Any person engaged in operating a rendering plant shall secure from the director an annual rendering plant license and pay an annual fee of one hundred dollars: PROVIDED, That no license shall be required to operate a rendering plant on the premises of a licensed slaughtering establishment maintaining state or federal meat inspection unless said rendering plant receives dead animals that have been transported on public highways. [1949 c 100 § 5; Rem. Supp. 1949 § 3142-5.]

16.68.060 Independent collector license fee. Any person engaged in the business of independent collector shall secure from the director an annual independent collector license and pay an annual fee of fifty dollars. [1949 c 100 § 6; Rem. Supp. 1949 § 3142-6.]

16.68.070 Substation or places of transfer license fee. Any rendering plant operator or independent collector that operates substations or places of transfer shall secure from the director an annual substation license or place of transfer license and pay an annual fee of twenty-five dollars for each substation or place of transfer. [1949 c 100 § 7; Rem. Supp. 1949 § 3142-7.]

16.68.080 Expiration of license—Revocation. Any license or permit issued under this chapter shall expire on the thirtieth day of June next subsequent to the date of issue, and may be sooner revoked by the director or his or her authorized representative for violations of this chapter. Any licensee or permittee under this chapter shall have the right to demand a hearing before the director before a revocation is made permanent. [2011 c 336 § 440; 1949 c 100 § 8; Rem. Supp. 1949 § 3142-8.]

16.68.090 Applications for license. Any person applying for a license to operate a rendering plant and/or substation and/or place of transfer, or to act as an independent collector shall make application on forms furnished by the director. Said application shall give all information required by the director and shall be accompanied by the required license fee. [1949 c 100 § 9; Rem. Supp. 1949 § 3142-9.]

16.68.100 Procedure upon application—Inspection of premises. If the director finds that the locations, buildings, substations equipment, vehicles, places of transfer, or proposed method of operation do not fully comply with the requirements of this chapter, he or she shall notify the applicant by registered letter wherein the same fails to comply. If the applicant whose plant or operation failed to comply notifies the director within ten days from the receipt of the registered letter that he or she will discontinue operations, the fee

accompanying the application will be returned to him or her; otherwise no part of the fee will be refunded. If the applicant whose plant failed to comply within a reasonable time, to be fixed by the director or his or her authorized representative, notifies the director that such defects are remedied, a second inspection shall be made. Not more than two inspections may be made on one application. [2011 c 336 § 441; 1949 c 100 § 10; Rem. Supp. 1949 § 3142-10.]

16.68.110 Duty of licensees as to premises. Every licensee under this chapter must comply with the following:

(1) All floors shall be constructed of concrete or other impervious material, shall be kept reasonably clean and in good repair. Floors shall slope at least one-fourth inch to the foot toward drains, and slope at least three-eighths inch to the foot as the drains are approached.

(2) Adequate sanitary drainage must be provided leading to approved grease traps and approved sewage disposal system. No point on the floor shall be over sixteen feet from a drain.

(3) Suitable disposal of paunch contents must be provided in accordance with sanitary regulations.

(4) Walls shall be of impervious material to a height not less than six feet from the floor with a tight union with the floor.

(5) Potable water supply shall be provided for human consumption, washing, and cleaning.

(6) Ample steam shall be provided for cleaning purposes.

(7) Approved toilet and dressing room facilities must be provided for employees.

(8) The building must be kept free from flies, rats, mice, and cockroaches.

(9) Premises must be kept neat and orderly and all buildings must be attractive in appearance.

(10) All rendering plants, substations, and places of transfer shall be so located, arranged, constructed, and maintained, and the operation so conducted at all times as to be consistent with public health and safety.

(11) Suitable facilities for the dipping, washing, and disinfecting of hides obtained from animals that died or were killed on account of an infectious or contagious disease, shall be provided.

(12) Two copies of building or remodeling plans shall be forwarded to the director for his or her approval before such building or remodeling is begun. [2011 c 336 § 442; 1949 c 100 § 12; Rem. Supp. 1949 § 3142-12.]

16.68.120 Duty of licensees—Standards. Every licensee under this chapter shall comply with the following:

(1) Dead animals shall be placed in containers or vehicles which are constructed of or lined with impervious material, and which do not permit the escape of any liquid, and which are covered in such a way that the contents shall not be openly exposed to insects.

(2) All vehicles and containers used for transporting dead animals shall be properly cleaned and disinfected before leaving the premises of a rendering plant, substation or place of transfer.

(3) After original loading, dead animals shall not be moved from the transporting container or vehicle upon a pub-

lic highway or in any other place, except at a licensed rendering plant, licensed substation, or licensed place of transfer.

(4) No containers and vehicles used for transporting dead animals shall be used for the transporting of live animals except to a licensed rendering plant.

(5) All vehicles used to haul dead animals that have died of an infectious or contagious disease, shall proceed directly to the unloading point and shall not enter other premises until the vehicle has been properly cleaned and disinfected.

(6) The name of the rendering plant or independent collector shall be painted in letters at least four inches high on each side of every truck used for transporting dead animals.

(7) The skinning and dismembering of dead animals shall be done in the building where they are processed.

(8) Cooking vats or tanks shall be airtight except for proper escape for steam or vapor.

(9) Steam or vapor from cooking vats or tanks shall be so disposed of as not to be detrimental to public health or safety.

(10) Dead animals shall be processed within forty-eight hours after delivery to the rendering plant.

(11) No carcasses, parts thereof, or packing house refuse under process for marketing shall be permitted to come in contact with any part of the building or the equipment used in connection with the unloading, skinning, dismembering and grinding of carcasses or refuse as originally received at disposal plant. [1949 c 100 § 13; Rem. Supp. 1949 § 3142-13.]

16.68.130 Right of access to premises and records.

The director or his or her authorized agent, shall have free and uninterrupted access to all parts of premises that come under the provisions of this chapter, for the purpose of making inspections and the examination of records. [2011 c 336 § 443; 1949 c 100 § 14; Rem. Supp. 1949 § 3142-14.]

16.68.140 Unlawful possession of horse meat—Exceptions. It shall be unlawful for any person to transport, to sell, offer to sell, or have on his or her premises horse meat for other than human consumption unless said horse meat is decharacterized in a manner prescribed by the director: PROVIDED, That this provision shall not apply to carcasses slaughtered by a farmer for consumption on his or her own ranch or to carcasses in the possession of a person licensed under this chapter, or to canned horse meat meeting United States bureau of animal industry regulations. [2011 c 336 § 444; 1949 c 100 § 15; Rem. Supp. 1949 § 3142-18.]

16.68.150 Feeding of carcasses to swine unlawful—Exception. It shall be unlawful to feed carcasses of animals, or any part or portion thereof, to swine, unless said carcasses or portions thereof are cooked in a manner prescribed by the director. [1949 c 100 § 16; Rem. Supp. 1949 § 3142-20.]

Swine, garbage feeding: RCW 16.36.105 and 16.36.110.

16.68.160 Disposition of fees. Funds collected for license fees and inspection fees shall be retained by the director to be used for the enforcement of this chapter. [1949 c 100 § 11; Rem. Supp. 1949 § 3142-11.]

16.68.170 Rules and regulations. The director is authorized and shall make and enforce such regulations as may be necessary to effectuate the provisions of this chapter.

Such regulations shall be consistent with the provisions of this chapter. [1949 c 100 § 17; Rem. Supp. 1949 § 3142-21.]

16.68.180 Penalty for violations. The violation of any provision of this chapter shall be a misdemeanor. [1949 c 100 § 18; Rem. Supp. 1949 § 3142-22.]

16.68.190 Bait for trapping purposes—Exception. Nothing in this chapter shall prohibit the department of fish and wildlife from using the carcasses of dead animals for trap bait in their regular trapping operations. [1994 c 264 § 6; 1988 c 36 § 7; 1949 c 100 § 18A; Rem. Supp. 1949 § 3142-23.]

Chapter 16.70 RCW

CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS

Sections

16.70.010	Purpose.
16.70.020	Definitions.
16.70.030	Emergency action authorized—Scope—Animals as public nuisance.
16.70.040	Rules—Scope.
16.70.050	Violations—Penalty.
16.70.060	Concurrent powers—Cooperation between officials.

16.70.010 Purpose. The incidence of disease communicated to human beings by contact with pet animals has shown an increase in the past few years. The danger to human beings from such pets infected with disease communicable to humans has demonstrated the necessity for legislation to authorize the secretary of the department of health and the state board of health to take such action as is necessary to control the sale, importation, movement, transfer, or possession of such animals where it becomes necessary in order to protect the public health and welfare. [1991 c 3 § 2; 1971 c 72 § 1.]

16.70.020 Definitions. The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

- (1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.
- (2) "Secretary" means the secretary of the department of health or his or her designee.
- (3) "Department" means the department of health.
- (4) "Board" means the Washington state board of health.
- (5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.
- (6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described and designated enclosure or area within this state, or the restraining of any such pet animal or animals from entering this state. [1991 c 3 § 3; 1971 c 72 § 2.]

16.70.030 Emergency action authorized—Scope—Animals as public nuisance. In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is

hereby authorized to take any reasonable action deemed necessary by him or her to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title 7 RCW and RCW 43.70.170, 43.70.180, and 43.70.190.

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance. [2011 c 336 § 445; 1971 c 72 § 3.]

16.70.040 Rules—Scope. (1) The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined in RCW 16.70.020 which are reasonably necessary for the protection and welfare of the people of this state.

(2) The director of the department of agriculture shall also be authorized to adopt rules to allow administration of permits for those pet animals under subsection (1) of this section by the state veterinarian. [1996 c 188 § 5; 1971 c 72 § 4.]

16.70.050 Violations—Penalty. Any person violating or refusing or neglecting to obey the order or directive issued by the secretary pursuant to the authority granted under this action [act] or the rules and regulations promulgated by the board hereunder shall be guilty of a misdemeanor. [1971 c 72 § 5.]

16.70.060 Concurrent powers—Cooperation between officials. The powers conferred on the secretary by this chapter shall be concurrent with the powers conferred on the director of the department of agriculture by chapter 16.36 RCW, and chapter 43.23 RCW, and the secretary and director shall cooperate in exercising their responsibilities in these areas. [1971 c 72 § 6.]

Chapter 16.72 RCW FUR FARMING

Sections

16.72.010	Definitions.
16.72.020	Quarantine controls.
16.72.030	Fox, mink, marten declared personality.
16.72.040	Branding—Recording.

16.72.010 Definitions. As used in this chapter:

"Director" means director of agriculture.

"Department" means department of agriculture.

"Person" includes any individual, firm corporation, trust, association, copartnership, society, or other organization of individuals and any other business unit, device or arrangement.

"Fur farming" means breeding, raising and rearing of mink, marten, fox and chinchilla in captivity or enclosures. [1955 c 321 § 2.]

16.72.020 Quarantine controls. Fur farming shall be deemed an agricultural pursuit and the director is hereby authorized to exercise quarantine controls over such farms in accordance with the provisions of this title. Facilities avail-

able to the department may be used by the director in carrying out the provisions of this chapter. [1955 c 321 § 3.]

16.72.030 Fox, mink, marten declared personality. All fox, mink and marten that have been lawfully imported or acquired, or bred or reared in captivity or enclosures, are declared to be personal property. Any person hereafter acquiring any such fur bearing animals in the wild state, shall within ten days furnish satisfactory proof to the director that such animals were lawfully obtained. Such wild animals shall not become personal property under the provisions of this section until such proof is furnished. [1955 c 321 § 4.]

16.72.040 Branding—Recording. The owners of any fox, mink, or marten may mark them by branding with tattoo or other marks for the purpose of identification, but no person shall be entitled to ownership in or rights under any particular branding marks unless and until the branding marks are recorded with the department in the same manner and with like effect as brands of other animals are recorded as provided in *chapter 16.56 RCW. [1955 c 321 § 5.]

*Reviser's note: Chapter 16.56 RCW was repealed by 1959 c 54 § 39. For later enactment, see chapter 16.57 RCW.

Title 17

WEEDS, RODENTS, AND PESTS

Chapters

- 17.04 Weed districts.**
- 17.06 Intercounty weed districts.**
- 17.10 Noxious weeds—Control boards.**
- 17.12 Agricultural pest districts.**
- 17.15 Integrated pest management.**
- 17.21 Washington pesticide application act.**
- 17.24 Insect pests and plant diseases.**
- 17.26 Control of spartina and purple loosestrife.**
- 17.28 Mosquito control districts.**
- 17.34 Pest control compact.**

Control of predatory birds injurious to agriculture: RCW 15.04.110 through 15.04.120.

Crop liens: Chapter 60.11 RCW.

Director of agriculture: Chapter 43.23 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Mosquito control: Chapter 70.22 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Washington pesticide control act: Chapter 15.58 RCW.

Chapter 17.04 RCW WEED DISTRICTS

Sections

- 17.04.010 Districts authorized—Area and boundaries.
- 17.04.030 Petition—Time, place and notice of hearing.
- 17.04.050 Board to determine petition—Resolution to create district.
- 17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations.
- 17.04.150 Powers—Weed inspector.
- 17.04.160 Contiguous lands.
- 17.04.170 Indian reservation lands—United States lands.
- 17.04.180 County and state lands.
- 17.04.190 Duties of weed inspector.
- 17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction.
- 17.04.210 Statement of expense—Hearing.
- 17.04.220 Examination at hearing of expenses—Amount is tax on land—Effect of failure to serve notices.
- 17.04.230 Appellate review—Notice—Cost bond.
- 17.04.240 Assessments—Classification of property—Tax levy.
- 17.04.245 Assessment—Tax roll—Collection.
- 17.04.250 District treasurer—Duties—Fund.
- 17.04.260 Limit of indebtedness.
- 17.04.270 Districts organized under prior law—Reorganization.
- 17.04.280 Officials of district may enter lands—Penalty for prevention.

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.04.010 Districts authorized—Area and boundaries. The boards of county commissioners of the respective counties may create a weed district or districts within their counties and enlarge any district, or reduce any district or create or combine or consolidate the districts, or divide or create new districts, from time to time, in the manner hereinafter provided, for the purpose of destroying, preventing and exter-

minating, or to prevent the introduction, propagation, cultivation or increase of, any particular weed, weeds or plants, or all weeds or plants, including Scotch broom, which are now or may hereafter be classed by the agricultural experiment station of Washington State University as noxious weeds, or plants detrimental to or destructive of crops, fruit, trees, shrubs, valuable plants, forage, or other agricultural plants or produce. Any such district shall include not less than one section of land, and the boundaries thereof shall be along an established road, railroad, scab, uncleared or grazing land, or property line, or established lines, or some natural boundary, and shall include only cultivated or farming lands and shall not include any scab, uncleared or grazing land, except such as shall lie wholly within cultivated or farming lands within the districts, or which lie adjacent to such cultivated or farming lands and which are infested, or which may reasonably be expected to become infested, with the particular weed or weeds to be destroyed, prevented and exterminated by such district: PROVIDED, That any quarter section of land, or lesser legal subdivision in single ownership, fifty percent of which is cultivated or farming land, shall be considered cultivated and farming land within the meaning of this chapter. [1961 c 250 § 1; 1937 c 193 § 1; 1929 c 125 § 1; RRS § 2771. Prior: 1921 c 150 § 1. Formerly RCW 17.04.010 and 17.04.020.]

17.04.030 Petition—Time, place and notice of hearing. Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed weed district may file a petition with the board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known land owners within the proposed district, together with the addresses of such land owners. Upon the filing of such petition the board of county commissioners shall fix a time for a hearing thereon, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, one copy of which shall be at the main entrance to the court house, and by mailing a copy of such notice to each of the land owners named in the petition at the address therein named, and if any of the land described in the petition be owned by the state, a copy thereof shall be mailed to the department of natural resources at Olympia. [1988 c

128 § 4; 1929 c 125 § 2; RRS § 2772. Prior: 1921 c 150 § 2. Formerly RCW 17.04.030 and 17.04.040.]

17.04.050 Board to determine petition—Resolution to create district. At the time and place fixed for such hearing the board of county commissioners shall determine whether such weed district shall be created and if such board determines that such district shall be created, it shall fix the boundaries thereof, but shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in this petition, and shall not enlarge the boundaries of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice to all land owners interested as provided in RCW 17.04.030. If the board shall determine that the weed district petitioned for shall be created it shall pass a resolution to that effect and shall assign a number to such weed district which shall be the lowest number not already taken or adopted by a weed district in such county, and thereafter such district shall be known as "Weed District No. . . . of County," inserting in the first blank the number of the district and in the second the name of the county in which the district is organized. [1929 c 125 § 3; RRS §§ 2773, 2774. Prior: 1921 c 150 §§ 3, 4. Formerly RCW 17.04.050 and 17.04.060.]

17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations. If the board of county commissioners establish such district it shall call a special meeting to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established by such board.

Notice of such meeting shall be given by the county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the county commissioner in whose commissioner district such district is located shall act as chair and call the meeting to order. The chair shall appoint two persons to assist him or her in conducting the election, one of whom shall act as clerk. If such county commissioner be not present the electors of such district then present shall elect a chair of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chair of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. . . .

of county (giving number of district and name of county)." If the challenged person shall take such oath or make such affirmation, he or she shall be entitled to vote; otherwise his or her vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he or she desires as the first directors of such district and shall fold his or her ballot and hand the same to the chair of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chair shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his or her election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his or her election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first Monday of March following his or her election.

Annually thereafter, there shall be held a meeting of the electors of such district on the last Monday in February, except that the directors may, by giving the same notice as is required for the initial meeting, fix an earlier time for the annual meeting on any nonholiday during the months of December, January, or February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting. In conducting directors' elections, the chair may accept nominations from the floor but voting shall not be limited to those nominated.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the county commissioners of the county in which such district is located shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chair and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the board of county commissioners, which bond shall be filed with the county commissioners and shall be conditioned for the faithful discharge of his or her duties. The cost of such bond shall be paid by the district the same as other expenses of the district. At any annual meeting the

method for destroying, preventing, and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. The qualified electors of any weed district, at any annual meeting, may make other weeds that are not on the petition subject to control by the weed district by a two-thirds vote of the electors present: PROVIDED, That said weeds have been classified by the agricultural experiment station of Washington State University as noxious and: PROVIDED FURTHER, That the directors of the weed district give public notice in the manner required for initial meetings of the proposed new control of said weeds by the weed district. [2011 c 336 § 446; 1971 ex.s. c 292 § 15; 1961 c 250 § 2; 1929 c 125 § 4; RRS § 2774-1. Formerly RCW 17.04.070 through 17.04.140.]

Elections: Chapter 29A.84 RCW.

Additional notes found at www.leg.wa.gov

17.04.150 Powers—Weed inspector. The board of directors of such weed district shall have power:

(1) To adopt rules and regulations, plans, methods, and means for the purpose of destroying, preventing, and exterminating the weed or weeds specified in the petition, and to supervise, carry out, and enforce such rules, regulations, plans, methods, and means.

(2) To appoint a weed inspector and to require from him or her a bond in such sum as the directors may determine for the faithful discharge of his or her duties, and to pay the cost of such bond from the funds of such district; and to direct such weed inspector in the discharge of his or her duties; and to pay such weed inspector from the funds of such district such per diem or salary for the time employed in the discharge of his or her duties as the directors shall determine. [2011 c 336 § 447; 1961 c 250 § 3; 1929 c 125 § 9; RRS § 2778-1. Prior: 1921 c 150 § 6.]

17.04.160 Contiguous lands. Any city or town contiguous to or surrounded by a weed district formed under this chapter shall provide for the destruction, prevention and extermination of all weeds specified in the petition which are within the boundaries of such city or town, in the same manner and to the same extent as is provided for in such surrounding or contiguous weed district; and it shall be the duty of those in charge of school grounds, playgrounds, cemeteries, parks, or any lands of a public or quasi public nature when such lands shall be contiguous to, or within any weed district, to see that all weeds specified in the petition for the creation of such district are destroyed, prevented and exterminated in accordance with the rules and requirements of such district. [1929 c 125 § 6; RRS § 2775-1.]

Destruction of weeds, etc., city ordinance: RCW 35.21.310.

17.04.170 Indian reservation lands—United States lands. Any lands owned by any individual wholly or partly within the United States government Indian reservation may

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be included within a weed district formed under this chapter, and shall be subject to the same rules, regulations and taxes as other lands within the district; and the board of directors of any weed district are authorized to arrange with the officer or agent in charge of any United States lands, within or contiguous to any such district, for the destruction, prevention and extermination of weeds on such government lands. [1929 c 125 § 7; RRS § 2775-2.]

17.04.180 County and state lands. Whenever any lands belonging to the county are included within a weed district, the county legislative authority shall determine the amount of the taxes for which the lands would be liable if they were in private ownership, and the county legislative authority shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the appropriate state agency for payment a statement showing the amount of the tax to which the lands would be liable if they were in private ownership, separately describing each lot or parcel and, if delinquent, with interest and penalties consistent with RCW 84.56.020. [1991 c 245 § 1; 1984 c 7 § 18; 1971 ex.s. c 119 § 1; 1961 c 250 § 4; 1929 c 125 § 8; RRS § 2777. Prior: 1921 c 150 § 7.]

Additional notes found at www.leg.wa.gov

17.04.190 Duties of weed inspector. It shall be the duty of the weed inspector to carry out the directions of the board of directors and to see that the rules and regulations adopted by the board are carried out. He or she shall personally deliver or mail to each resident landowner within such district and to any lessee or person in charge of any land within such district and residing in such district, a copy of the rules and regulations of such district; and he or she shall personally deliver a copy thereof to nonresident landowners or shall deposit a copy of the same in the United States post office in an envelope with postage prepaid thereon addressed to the last known address of such person as shown by the records of the county auditor; and in event no such address is available for mailing he or she shall post a copy of such rules and regulations in a conspicuous place upon such land. A record shall be kept by the weed inspector of such dates of mailing, posting, or delivering such rules and regulations. In case of any railroad such rules and regulations shall be delivered to the section foreman, or to any official of the railroad having offices within the state. Such rules and regulations must be delivered, posted, or mailed by the weed inspector as herein provided at least ten days before the time to start any annual operations necessary to comply with such rules and regulations: PROVIDED, That after such district shall have been in operation two years such rules and regulations shall be delivered to resident landowners only once every three years, unless such rules and regulations are changed. [2011 c 336 § 448; 1961 c 250 § 5; 1929 c 125 § 10; RRS § 2778-2.]

17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction. (1) If the weed inspector, or the board of directors, shall find that the rules and regulations of the weed district are not being carried out on any one or more parcels of land within such district, the weed inspec-

tor shall give forthwith a notice in writing, on a form to be prescribed by the directors, to the owners, tenants, mortgagees, and occupants, or to the accredited resident agent of any nonresident owner of such lands within the district whereon noxious weeds are standing, being or growing and in danger of going to seed, requiring him or her to cause the same to be cut down, otherwise destroyed or eradicated on such lands in the manner and within the time specified in the notice, such time, however, not to exceed seven days. It shall be the duty of the county auditor and county treasurer to make available to the weed inspector lists of owners, tenants, and mortgagees of lands within such district;

(2) If a resident agent of any nonresident owner of lands where noxious weeds are found standing, being, or growing cannot be found, the local weed inspector shall post said notice in the form provided by the directors in three conspicuous places on said land, and in addition to posting said notice the local weed inspector shall, at the same time mail a copy thereof by registered or certified mail with return receipt requested to the owner of such nonresident lands, if his or her post office address is known or can be ascertained by said inspector from the last tax list in the county treasurer's office, and it shall be the duty of the treasurer to furnish such lists upon request by the weed inspector. Proof of such serving, posting, and mailing of notice by the weed inspector shall be made by affidavit forthwith filed in the office of the county auditor and it shall be the duty of the county auditor to accept and file such affidavits;

(3) If the weeds are not cut down, otherwise destroyed, or eradicated within the time specified in said notice, the local weed inspector shall personally, or with such help as he or she may require, cause the same to be cut down or otherwise destroyed in the manner specified in said notice. [2011 c 336 § 449; 1961 c 250 § 6; 1937 c 193 § 2; 1929 c 125 § 11; RRS § 2778-3. Prior: 1921 c 150 § 9, part.]

17.04.210 Statement of expense—Hearing. The weed inspector shall keep an accurate account of expenses incurred by him or her in carrying out the provisions of this chapter with respect to each parcel of land entered upon, and the prosecuting attorney of the county or the attorney for the weed district shall cause to be served, mailed, or posted in the same manner as provided in this chapter for giving notice to destroy noxious weeds, a statement of such expenses, including description of the land, verified by oath of the weed inspector to the owner, lessee, mortgagee, occupant or agent, or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney or attorney for the weed district and naming a time and place when and where such matter will be brought before the board of directors of such district for hearing and determination, said statement or notice to be served, mailed, or posted, as the case may be, at least ten days before the time for such hearing. [2011 c 336 § 450; 1961 c 250 § 7; 1929 c 125 § 12; RRS § 2778-4.]

17.04.220 Examination at hearing of expenses—Amount is tax on land—Effect of failure to serve notices. At the time of such hearing as provided in RCW 17.04.210, or at such time to which the same may be continued or adjourned, the board of directors shall proceed to examine

expenses incurred by the weed inspector in controlling weeds on the parcel of land in question, and shall hear such testimony of such other persons who may have legal interest in the proceedings, and shall enter an order upon its minutes as to what amount, if any, is properly chargeable against the lands for weed control. Cost of serving, mailing and posting shall be added to any amount so found to be due and shall be considered part of the cost of weed control on the land in question. The amount so charged by the directors shall be a tax on the land on which said work was done after the expiration of ten days from the date of entry of said order, unless an appeal be taken as in this chapter provided, in which event the same shall become a tax at the time the amount to be paid shall be determined by the court; and the county treasurer shall enter the same on the tax rolls against the land for the current year and collect it, together with penalty and interest, as other taxes are collected, and when so collected the same shall be paid into the fund for such weed district: **PROVIDED**, That a failure to serve, mail or post any of the notices or statements provided for in this chapter, shall not invalidate said tax, but in case of such failure the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this chapter. [1961 c 250 § 8; 1929 c 125 § 13; RRS § 2778-5. Prior: 1921 c 150 § 5. FORMER PART OF SECTION: 1925 c 125 § 14 now codified in RCW 17.04.230.]

17.04.230 Appellate review—Notice—Cost bond. Any interested party may appeal from the decision and order of the board of directors of such district to the superior court of the county in which such district is located, by serving written notice of appeal on the chair of the board of directors and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to such district and in all respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice must be served and filed within ten days from the date of the decision and order of such board of directors, and said bond must be filed within five days after the filing of such notice of appeal. Whenever notice of appeal and the cost bond as herein provided shall have been filed with the clerk of the superior court, the clerk shall notify the board of directors of such district thereof, and such board shall forthwith certify to said court all notices and records in said matters, together with proof of service, and a true copy of the order and decision pertaining thereto made by such board. If no appeal be perfected within ten days from the decision and order of such board, the same shall be deemed confirmed and the board shall certify the amount of such charges to the county treasurer who shall enter the same on the tax rolls against the land. When an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons served under this chapter: **PROVIDED**, That appellate review of the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such review, the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer

and said treasurer shall proceed to enter the same on his or her rolls against the lands affected. [2011 c 336 § 451; 1988 c 202 § 21; 1971 c 81 § 56; 1929 c 125 § 14; RRS § 2778-6. Formerly RCW 17.04.220, part, and 17.04.230.]

Appeals to supreme court: Rules of court: See Rules of Appellate Procedure.

Cost bonds, civil procedure: RCW 4.84.210 through 4.84.240.

Additional notes found at www.leg.wa.gov

17.04.240 Assessments—Classification of property—Tax levy. The directors shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall prorate the cost so determined and shall levy assessments to be collected with the general taxes of the county. In the event that any bonded or warrant indebtedness pledging tax revenue of the district shall be outstanding on April 1, 1951, the directors may, for the sole purpose of retiring such indebtedness, continue to levy a tax upon all taxable property in the district until such bonded or warrant indebtedness shall have been retired. [1957 c 13 § 2. Prior: 1951 c 107 § 1; 1929 c 125 § 5, part; RRS § 2774-2.]

Additional notes found at www.leg.wa.gov

17.04.245 Assessment—Tax roll—Collection. Such assessments as are made under the provisions of RCW 17.04.240, by the weed district commissioners, shall be spread by the county assessor on the general tax roll in a separate item. Such assessments shall be collected and accounted for with the general taxes, with the terms and penalties thereto attached. [1951 1st ex.s. c 6 § 1.]

17.04.250 District treasurer—Duties—Fund. The county treasurer shall be ex officio treasurer of such district and the county assessor and other county officers shall take notice of the formation of such district and of the tax levy and shall extend the tax on the tax roll against the property liable therefor the same as other taxes are extended, and such tax shall become a general tax against such property, and shall be collected and accounted for as other taxes, with the terms and penalties thereto attached. The moneys collected from such tax shall be paid into a fund to be known as "fund of weed district of county" (giving the number of district and name of county). All expenses in connection with the operation of such district, including the expenses of initial and annual meetings, shall be paid from such fund, upon vouchers approved by the board of directors of such district. [1957 c 13 § 3. Prior: 1929 c 125 § 5, part; 1921 c 150 § 5; RRS § 2775.]

17.04.260 Limit of indebtedness. No weed district shall contract any obligation in any year in excess of the total of the funds which will be available during the current year from the tax levy made in the preceding year and funds received in the current year from services rendered and from any other lawful source, and funds accumulated from previous years. [1963 c 52 § 1; 1961 c 250 § 9; 1957 c 13 § 4. Prior: 1929 c 125 § 5, part; 1921 c 150 § 8; RRS § 2778.]

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17.04.270 Districts organized under prior law—Reorganization. Any weed district heretofore organized under any law of the state of Washington may become a weed district under the provisions of this chapter and entitled to exercise all the powers and subject to the limitations of a weed district organized under this chapter by the election of three directors for such weed district which shall be done in the same manner as is provided in this chapter for the election of the first directors of a district organized under this chapter. [1929 c 125 § 15; RRS § 2778-7.]

17.04.280 Officials of district may enter lands—Penalty for prevention. All weed district directors, all weed inspectors, and all official agents of all weed districts, in the performance of their official duties, have the right to enter and go upon any of the lands within their weed district at any reasonable time for any reason necessary to effectuate the purposes of the weed district. Any person who prevents or threatens to prevent any lawful agent of the weed district, after said agent identifies himself or herself and the purpose for which he or she is going upon the land, from entering or going upon the land within said weed district at a reasonable time and for a lawful purpose of the weed district, is guilty of a misdemeanor. [2011 c 336 § 452; 1961 c 250 § 10.]

Chapter 17.06 RCW

INTERCOUNTY WEED DISTRICTS

Sections

- 17.06.010 Definitions.
- 17.06.020 Intercounty weed districts authorized.
- 17.06.030 Petition for formation—Notice of hearing.
- 17.06.040 Hearing—Boundaries—Order of establishment.
- 17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules.
- 17.06.060 Directors powers and duties—Taxation—Treasurer—Costs.
- 17.06.070 Actions of county officers—Costs.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.06.010 Definitions. As used in this chapter, unless the context indicates otherwise, "principal board of county commissioners", "principal county treasurer", and "principal county auditor" mean respectively those in the county of that part of the proposed intercounty weed district in which the greatest amount of acreage is located. [1959 c 205 § 1.]

17.06.020 Intercounty weed districts authorized. An intercounty weed district, including all or any part of two counties or more, may be created for the purposes set forth in RCW 17.04.010 by the joint action of the boards of county commissioners of the counties in which any portion of the proposed district is located. [1959 c 205 § 2.]

17.06.030 Petition for formation—Notice of hearing. Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed intercounty weed district may file a petition with the principal board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already

formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known landowners within the proposed district, together with the addresses of such landowners. Upon the filing of such petition the principal board of county commissioners shall notify the other boards of commissioners, shall arrange a time for a joint hearing on the petition, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, and at the main entrance to the court house of each county, and by mailing a copy of such notice to each of the landowners named in the petition at the address named therein. If any of the land described in the petition be owned by the state a copy thereof shall be mailed to the department of natural resources at Olympia. [1988 c 128 § 5; 1959 c 205 § 3.]

17.06.040 Hearing—Boundaries—Order of establishment. At the time and place fixed for such hearing, with the chair of the principal board acting as chair, the respective boards shall determine by a majority vote of each of the boards of county commissioners of the counties whether such intercounty weed district shall be created, and if they determine that such district shall be created, the respective boards shall fix the boundaries of the portion of the proposed district within their respective counties, but they shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented, and exterminated as set forth in the petition, and they shall not enlarge the boundary of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice, as provided in RCW 17.06.030, to all landowners interested. If the respective bodies shall determine that the weed district petitioned for shall be created each such board shall thereupon enter an order establishing and defining the boundary lines of the proposed district within its respective county. A number shall be assigned to such weed district which shall be the lowest number not already taken or adopted by an intercounty weed district in the state, and thereafter such district shall be known as "weed district No. . . .", inserting in the blank the number of the district.

If any county represented does not by a majority vote of its board of commissioners support the petition for an intercounty district, the petition shall be dismissed. [2011 c 336 § 453; 1959 c 205 § 4.]

17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules. If the respective boards of county commissioners establish such district the chair of the principal board shall call a special meeting of landowners to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established.

Notice of such meeting shall be given by the principal county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the chair shall appoint two persons to assist him or her in conducting the election, one of whom shall act as clerk. If such chair be not present the electors of such district then present shall elect a chair of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chair of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. . . . (giving number of district)." If the challenged person shall take such oath or make such affirmation, he or she shall be entitled to vote; otherwise his or her vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he or she desires as the first directors of such district and shall fold his or her ballot and hand the same to the chair of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chair shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his or her election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his or her election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first day of March following his or her election.

Annually thereafter, there shall be held a meeting of the electors of such district on the first Monday in February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time when and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the remaining members of the board of directors shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chair and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the principal board of county commissioners, which bond shall be filed with the same board and shall be conditioned for the faithful discharge of his or her duties. The cost of such bond shall be paid by the district the same as other expenses of the district.

At any annual meeting the method for destroying, preventing, and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. [2011 c 336 § 454; 1971 ex.s. c 292 § 16; 1959 c 205 § 5.]

Additional notes found at www.leg.wa.gov

17.06.060 Directors powers and duties—Taxation—Treasurer—Costs. The board of directors of an intercounty weed district shall have the same powers and duties as the board of directors of a weed district located entirely within one county, and all the provisions of chapter 17.04 RCW are hereby made applicable to intercounty weed districts: PROVIDED, That in the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the district, the action shall be performed by the officer or board of the county for that area of the district which is located within his or her respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the district in which the greatest amount of acreage is located. Any power which may be or duty which shall be performed in connection therewith shall be performed by the officer or board receiving such as though only a district in a single county were concerned. All moneys collected from such area constituting a part of such district that should be paid to such district shall be delivered to the principal county treasurer who shall be ex officio treasurer of such district. All other materials, information, or data relating to the district shall be submitted to the district board of directors.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [2011 c 336 § 455; 1959 c 205 § 6.]

17.06.070 Actions of county officers—Costs. Whenever any action is required or may be performed by any county officer or board for all purposes essential to the main-

tenance, operation, and administration of the district, such action shall be performed by the respective officer or board of the county of that part of the district in which the greatest amount of acreage of the district is located.

All costs incurred shall be borne proportionately by each county in that ratio which the amount of acreage of the district located in that part of each county forming a part of the district bears to the total amount of acreage located in the whole district. [1959 c 205 § 7.]

Chapter 17.10 RCW

NOXIOUS WEEDS—CONTROL BOARDS

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17.10.007 Purpose—Construction—1975 1st ex.s. c 13. The purpose of this chapter is to limit economic loss and adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic areas in the state.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law. [1997 c 353 § 1; 1975 1st ex.s. c 13 § 17. Formerly RCW 17.10.905.]

17.10.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Noxious weed" means a plant that when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board. The list is divided into three classes:

(a) Class A consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C consists of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(4) "Owner" means the person in actual control of property, or his or her agent, whether the control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement: PROVIDED, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of the easement is deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of the easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious weeds" means conforming to the standards of noxious weed control or prevention in this chapter or as adopted by rule in chapter 16-750 WAC by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those that are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW.

(10) "Aquatic noxious weed" means an aquatic plant species that is listed on the state weed list under RCW 17.10.080.

(11) "Screenings" means a mixture of mill or elevator run mixture or a combination of varying amounts of materials obtained in the process of cleaning either grain or seeds, or both, such as light or broken grain or seed, weed seeds, hulls, chaff, joints, straw, elevator dust, floor sweepings, sand, and dirt. [1997 c 353 § 2; 1995 c 255 § 6; 1987 c 438 § 1; 1975 1st ex.s. c 13 § 1; 1969 ex.s. c 113 § 1.]

Additional notes found at www.leg.wa.gov

17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status. (1) In each county of the state there is created a noxious weed control board, bearing the name of the county within which it is located. The jurisdictional boundaries of each board are the boundaries of the county within which it is located.

(2) Each noxious weed control board is inactive until activated pursuant to the provisions of RCW 17.10.040. [1997 c 353 § 3; 1969 ex.s. c 113 § 2.]

17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses. There is created a state noxious weed control board comprised of nine voting members and three nonvoting members. Four of the voting members shall be elected by the members of the various activated county noxious weed control boards, and shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and those qualifications shall continue through their term of office. Two of these members shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of agriculture is a voting member of the board. One voting member shall be elected by the directors of the various active weed districts formed under chapter 17.04 or 17.06 RCW. The Washington state association of counties appoints one voting member who shall be a member of a county legislative authority. The director shall appoint two voting members to represent the public interest, one from the west side and one from the east side of the state. The director shall also appoint three nonvoting members representing scientific disciplines relating to weed control. The term of office for all members of the board is three years from the date of election or appointment.

The board, by rule, shall establish a position number for each elected position of the board and shall designate which county noxious weed control board members are eligible to vote for each elected position. The elected members serve staggered terms. Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms. Nominations and elections shall be by mail and conducted by the board.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a chair and other officers as may be necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The members of the board serve without salary, but shall be reimbursed for travel expenses incurred in the performance of their duties under this chapter in accordance with RCW 43.03.050 and

43.03.060. [1997 c 353 § 4; 1987 c 438 § 2; 1975-'76 2nd ex.s. c 34 § 23; 1969 ex.s. c 113 § 3.]

Additional notes found at www.leg.wa.gov

17.10.040 Activation of inactive county noxious weed control board. An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either within sixty days after a petition is filed by one hundred registered voters within the county or, on its own motion, the county legislative authority shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is found to exist, then the county legislative authority shall, in the manner provided by RCW 17.10.050, appoint five persons to the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the county legislative authority to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred registered voters within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of the filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the county legislative authority to activate the county's noxious weed control board and to appoint members to the board in the manner provided by RCW 17.10.050.

(3) The director, upon request of the state noxious weed control board, shall order a county legislative authority to activate the noxious weed control board immediately if an infestation of a class A noxious weed or class B noxious weed designated for control on the state noxious weed list is confirmed in that county. The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed has not been eradicated. [1997 c 353 § 5; 1987 c 438 § 3; 1975 1st ex.s. c 13 § 2; 1969 ex.s. c 113 § 4.]

17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy. (1) Each activated county noxious weed control board consists of five voting members appointed by the county legislative authority. In appointing the voting members, the county legislative authority shall divide the county into five geographical areas that best represent the county's interests, and appoint a voting member from each geographical area. At least four of the voting members shall be engaged in the primary production of agricultural products. There is one nonvoting member on the board who is the chair of the county extension office or an extension agent appointed by the chair of the county extension office. Each voting member of the board serves a term of four years, except that the county legislative authority shall,

when a board is first activated under this chapter, designate two voting members to serve terms of two years. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The voting members of the board serve until their replacements are appointed. New members of the board shall be appointed at least thirty days prior to the expiration of any board member's term of office.

Notice of expiration of a term of office shall be published at least twice in a weekly or daily newspaper of general circulation in the section [geographical area] with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the geographical area with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the geographical area supporting the nomination to the county noxious weed control board. After nominations close, the county noxious weed control board shall, after a hearing, send the applications to the county legislative authority recommending the names of the most qualified candidates, and post the names of those nominees in the county courthouse and publish in at least one newspaper of general circulation in the county. The county legislative authority, within ten days of receiving the list of nominees, shall appoint one of those nominees to the county noxious weed control board to represent that geographical area during that term of office.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect from its members a chair and other officers as may be necessary.

(4) In case of a vacancy occurring in any voting position on a county noxious weed control board, the county legislative authority of the county in which the board is located shall appoint a qualified person to fill the vacancy for the unexpired term. [1997 c 353 § 6; 1987 c 438 § 4; 1980 c 95 § 1; 1977 ex.s. c 26 § 6; 1975 1st ex.s. c 13 § 3; 1974 ex.s. c 143 § 1; 1969 ex.s. c 113 § 5.]

17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations. (1) Each activated county noxious weed control board shall employ or otherwise provide a weed coordinator whose duties are fixed by the board but which shall include inspecting land to determine the presence of noxious weeds, offering technical assistance and education, and developing a program to achieve compliance with the weed law. The weed coordinator may be employed full time, part time, or seasonally by the county noxious weed control board. County weed board employment practices shall comply with county personnel policies. Within sixty days from initial employment the weed coordinator shall obtain a pest control consultant license, a pesticide operator license, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent, or lease equipment, facilities, or products and may hire additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board has the power to adopt rules and regulations, subject to notice and hearing as provided in chapters 42.30 and 42.32 RCW, as are necessary for an effective county weed control or eradication program.

(3) Each activated county noxious weed control board shall meet with a quorum at least quarterly. [1997 c 353 § 7; 1987 c 438 § 5; 1969 ex.s. c 113 § 6.]

17.10.070 State noxious weed control board—Powers—Report. (1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it has the power to:

(a) Employ a state noxious weed control board executive secretary, and additional persons as it deems necessary, to disseminate information relating to noxious weeds to county noxious weed control boards and weed districts, to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts, and to assist the board in carrying out its responsibilities;

(b) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1st of each odd-numbered year to the county noxious weed control boards and the weed districts showing the expenditure of state funds on noxious weed control; specifically how the funds were spent; the status of the state, county, and district programs; and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control. [1998 c 245 § 3; 1997 c 353 § 8; 1987 c 438 § 6; 1975 1st ex.s. c 13 § 4; 1969 ex.s. c 113 § 7.]

17.10.074 Director—Powers. (1) In addition to the powers conferred on the director under other provisions of this chapter, the director, with the advice of the state noxious weed control board, has power to:

(a) Require the county legislative authority or the noxious weed control board of any county or any weed district to report to it concerning the presence, absence, or estimated amount of noxious weeds and measures, if any, taken or planned for the control thereof;

(b) Employ staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out this chapter;

(d) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter including but not limited to surveying for and detecting noxious weed infestations;

(e) Upon receipt of a complaint signed by a majority of the members of an adjacent county noxious weed control board or weed district, or by one hundred registered voters that are land owners within the county, require the county legislative authority or noxious weed control board of the county or weed district that is the subject of the complaint to

respond to the complaint within forty-five days with a plan for the control of the noxious weeds cited in the complaint;

(f) If the complaint in (e) of this subsection involves a class A or class B noxious weed, order the county legislative authority, noxious weed control board, or weed district to take immediate action to eradicate or control the noxious weed infestation. If the county or the weed district does not take action to control the noxious weed infestation in accordance with the order, the director may control it or cause it to be controlled. The county or weed district is liable for payment of the expense of the control work including necessary costs and expenses for attorneys' fees incurred by the director in securing payment from the county or weed district. The director may bring a civil action in a court of competent jurisdiction to collect the expenses of the control work, costs, and attorneys' fees;

(g) In counties without an activated noxious weed control board, enter upon any property as provided for in RCW 17.10.160, issue or cause to be issued notices and citations and take the necessary action to control noxious weeds as provided in RCW 17.10.170, hold hearings on any charge or cost of control action taken as provided for in RCW 17.10.180, issue a notice of civil infraction as provided for in RCW 17.10.230 and 17.10.310 through [and] 17.10.350, and place a lien on any property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the same authorities and responsibilities imposed by these sections on county noxious weed control boards;

(h) Adopt a list of noxious weed seeds and toxic weeds which shall be controlled in designated articles, products, or feed stuffs as provided for in RCW 17.10.235.

(2) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed control board, the administration of the director's powers under this chapter, the purchase of materials for controlling, containing, or eradicating noxious weeds, the purchase or collection of biological control agents for controlling noxious weeds, and the contracting for services to carry out the purposes of this chapter. In a county with an activated noxious weed control board, the director shall make every effort to contract with that board for the needed services.

(3) If the director determines the need to reallocate funds previously designated for county use, the director shall convene a meeting of the state noxious weed control board to seek its advice concerning any reallocation. [1997 c 353 § 9; 1987 c 438 § 7.]

17.10.080 State noxious weed list—Hearing—Adoption—Guidelines for placing plants on the list—Dissemination. (1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) The state noxious weed control board shall adopt guidelines by rule for placing plants on the state noxious weed list. These guidelines must include criteria for reconsideration of proposed new species that were not adopted by the state noxious weed control board, including the need for the board to be presented with additional data from scientific sources regarding any invasive and noxious qualities of the

species and from existing positive economic benefits before taking any action.

(3) Any person may request during a comment period established by the state noxious weed control board the inclusion, deletion, or designation change of any plant to the state noxious weed list.

(4) The state noxious weed control board shall send a copy of the list to each activated county noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board.

(5) The record of rule making must include the written findings of the board for the inclusion of each plant on the list. The findings shall be made available upon request to any interested person. [2011 c 126 § 1; 1997 c 353 § 10; 1989 c 175 § 57; 1987 c 438 § 8; 1975 1st ex.s. c 13 § 5; 1969 ex.s. c 113 § 8.]

Additional notes found at www.leg.wa.gov

17.10.090 State noxious weed list—Selection of weeds for control by county board. (1) Each county noxious weed control board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies that it finds necessary to be controlled in the county.

(2) The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds comprise the county noxious weed list.

(3) Nothing in this chapter limits a county noxious weed control board, or other branch of county or city government, from conducting education, outreach, or other assistance regarding plant species not included on the state noxious weed list if the county or city determines that the plant species causes localized risk or concern. [2011 c 126 § 2; 1997 c 353 § 11; 1987 c 438 § 9; 1969 ex.s. c 113 § 9.]

17.10.100 Order to county board to include weed from state board's list in county's noxious weed list. Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board or weed district to include a noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred registered voters within the county requesting that the weed be listed.

(2) Where the state noxious weed control board receives a request for inclusion from an adjacent county's noxious weed control board or weed district, which the adjacent board or district has included that weed in its county list, and the adjacent board or weed district alleges that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list. [1997 c 353 § 12; 1987 c 438 § 10; 1969 ex.s. c 113 § 10.]

(2012 Ed.)

17.10.110 Regional noxious weed control board—Creation. A regional noxious weed control board comprising the area of two or more counties may be created as follows:

Either the county legislative authority, or the noxious weed control board, or both, of two or more counties may, upon a determination that the purpose of this chapter will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. The resolution becomes effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board. [1997 c 353 § 13; 1987 c 438 § 11; 1975 1st ex.s. c 13 § 6; 1969 ex.s. c 113 § 11.]

17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards. In any case where a regional noxious weed control board is created, the county noxious weed control boards comprising the regional board shall still remain in existence and shall retain all powers and duties provided for the boards under this chapter.

The regional noxious weed control board is comprised of the voting members and the nonvoting members of the component counties noxious weed control boards or county legislative authorities who shall, respectively, be the voting and nonvoting members of the regional board: PROVIDED, That each county shall have an equal number of voting members. The board may appoint other nonvoting members as deemed necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect a chair from its members and other officers as may be necessary. Members of the regional board serve without salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties. [1997 c 353 § 14; 1987 c 438 § 12; 1969 ex.s. c 113 § 12.]

17.10.130 Regional noxious weed control board—Powers and duties. The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the state list that it finds necessary to be controlled on a regional basis. The weeds thus selected shall also be contained in the county noxious weed list of each county in the region.

(2) The regional board shall take action as may be necessary to coordinate the noxious weed control programs of the region and adopt a regional plan for the control of noxious weeds. [1997 c 353 § 15; 1987 c 438 § 13; 1969 ex.s. c 113 § 13.]

17.10.134 Liability of county and regional noxious weed control boards. Obligations or liabilities incurred by any county or regional noxious weed control board or any claims against a county or regional noxious weed control board are governed by chapter 4.96 RCW or RCW 4.08.120: PROVIDED, That individual members or employees of a

county noxious weed control board are personally immune from civil liability for damages arising from actions performed within the scope of their official duties or employment. [1997 c 353 § 16; 1987 c 438 § 14.]

17.10.140 Owner's duty to control spread of noxious weeds. (1) Except as is provided under subsection (2) of this section, every owner shall perform or cause to be performed those acts as may be necessary to:

(a) Eradicate all class A noxious weeds;

(b) Control and prevent the spread of all class B noxious weeds designated for control in that region within and from the owner's property; and

(c) Control and prevent the spread of all class B and class C noxious weeds listed on the county weed list as locally mandated control priorities within and from the owner's property.

(2) Forest lands classified under RCW 17.10.240(2), or meeting the definition of forest lands contained in RCW 17.10.240, are subject to the requirements of subsection (1)(a) and (b) of this section at all times. Forest lands are subject to the requirements of subsection (1)(c) of this section only within a one thousand foot buffer strip of adjacent land uses. In addition, forest lands are subject to subsection (1)(c) of this section for a single five-year period following the harvesting of trees for lumber. [1997 c 353 § 17; 1969 ex.s. c 113 § 14.]

17.10.145 State agencies' duty to control spread of noxious weeds. All state agencies shall control noxious weeds on lands they own, lease, or otherwise control through integrated pest management practices. Agencies shall develop plans in cooperation with county noxious weed control boards to control noxious weeds in accordance with standards in this chapter. All state agencies' lands must comply with this chapter, regardless of noxious weed control efforts on adjacent lands. [1997 c 353 § 18; 1995 c 374 § 75.]

Additional notes found at www.leg.wa.gov

17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement. It is recognized that the prevention, control, and eradication of noxious weeds presents a problem for immediate as well as for future action. It is further recognized that immediate prevention, control, and eradication is practicable on some lands and that prevention, control, and eradication on other lands should be extended over a period of time. Therefore, it is the intent of this chapter that county noxious weed control boards may use their discretion and, by agreement with the owners of land, may propose and accept plans for prevention, control, and eradication that may be extended over a period of years. The county noxious weed control board may make an agreement with the owner of any parcel of land by contract between the landowner and the respective county noxious weed control board, and the board shall enforce the terms of any agreement. The county noxious weed control board may make any terms that will best serve the interests of the owners of the parcel of land and the common welfare that comply with this chapter. Agreements made under this section must include at least a one thousand foot buffer for all adjacent agricultural

land uses. Noxious weed control in this buffer must comply with RCW 17.10.140(1). [1997 c 353 § 19; 1987 c 438 § 16.]

17.10.160 Right of entry—Warrant for noxious weed search—Civil liability—Penalty for preventing entry.

Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture where not otherwise prescribed by law may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens of weeds, general inspection, and the performance of eradication or control work. Prior to carrying out the purpose for which the entry is made, the official making such entry or someone in his or her behalf, shall make a reasonable attempt to notify the owner of the property as to the purpose and need for the entry.

(1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution upon which noxious weeds are standing or growing and the owner refuses permission to inspect the property, a judge of the superior court or district court in the county in which the property is located may, upon the request of the county noxious weed control board or its agent, issue a warrant directed to the board or agent authorizing the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work.

(2) Application for issuance and execution and return of the warrant authorized by this section shall be in accordance with the applicable rules of the superior court or the district courts.

(3) Nothing in this section requires the application for and issuance of any warrant not otherwise required by law: PROVIDED, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care.

(4) Any person who improperly prevents or threatens to prevent entry upon land as authorized in this section or any person who interferes with the carrying out of this chapter shall be upon conviction guilty of a misdemeanor. [1997 c 353 § 20; 1987 c 438 § 17; 1969 ex.s. c 113 § 16.]

17.10.170 Finding presence of noxious weeds—Notice for failure of owner to control—Control by county board—Liability of owner—Lien—Alternative. (1)

Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner is not taking prompt and sufficient action to control the noxious weeds, pursuant to the provisions of RCW 17.10.140, it shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, and shall identify the noxious weeds found to be present, order prompt control action, and specify the time, of at least ten days from issuance of the notice, within which the prescribed action must be taken. Upon deposit of the certified letter of notice, the noxious weed control authority shall make an affidavit of mailing that is prima facie evidence that proper notice was given. If seed or other propagule dispersion is imminent, immediate control action may be taken forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by cer-

tified mail or personal service, instead of ten days. If a landowner received a notice of violation from the county noxious weed control board in a prior growing season, removal or destruction of all above ground plant parts may be required at the most effective point in the growing season, as determined by the county weed board, which may be before or after propagule dispersion.

(2) The county noxious weed control board or its authorized agents may issue a notice of civil infraction as provided for in RCW 17.10.230, 17.10.310, and 17.10.350 to owners who do not take action to control noxious weeds in accordance with the notice.

(3) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board may control them, or cause their being controlled, at the expense of the owner. The amount of the expense constitutes a lien against the property and may be enforced by proceedings on the lien except as provided for by RCW 79.44.060. The owner is liable for payment of the expense, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses including reasonable attorneys' fees incurred by the county noxious weed control board in carrying out this section may be recovered at the same time as a part of the action filed under this section. Funds received in payment for the expense of controlling noxious weeds shall be transferred to the county noxious weed control board to be expended as required to carry out the purposes of this chapter.

(4) The county auditor shall record in his or her office any lien created under this chapter, and any lien shall bear interest at the rate of twelve percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling the weeds.

(5) As an alternative to the enforcement of any lien created under subsection (3) of this section, the county legislative authority may by resolution or ordinance require that each lien created be collected by the treasurer in the same manner as a delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED, That any collections for the lien shall not be considered as tax. [1997 c 353 § 21; 1987 c 438 § 18; 1979 c 118 § 1; 1975 1st ex.s. c 13 § 8; 1974 ex.s. c 143 § 3; 1969 ex.s. c 113 § 17.]

17.10.180 Hearing on liability for expense of control—Notice—Review. Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, is entitled to a hearing before the board on any charge or cost for which the owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail within thirty days, to each owner at the owner's last known address, as to any charge or cost and as to his or her right of a hearing. The hearing shall be scheduled within forty-five days of notification. Any determination or final action by the board is subject to judicial review by a proceed-

ing in the superior court in the county in which the property is located, and the court has original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: PROVIDED, That no stay or injunction shall lie to delay any control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210. [1997 c 353 § 22; 1987 c 438 § 19; 1969 ex.s. c 113 § 18.]

17.10.190 Notice and information as to noxious weed control. Each activated county noxious weed control board must publish annually, and at other times as may be appropriate, in at least one newspaper of general circulation within its area, a general notice. The notice shall direct attention to the need for noxious weed control and give other information concerning noxious weed control requirements as may be appropriate, or indicate where such information may be secured. In addition to the general notice required, the county noxious weed control board may use any appropriate media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. The methods may include some combination of physical, mechanical, cultural, chemical, and/or biological methods, including livestock. Publication of a notice as required by this section is not a condition precedent to the enforcement of this chapter. [1997 c 353 § 23; 1987 c 438 § 20; 1975 1st ex.s. c 13 § 9; 1969 ex.s. c 113 § 19.]

17.10.201 Noxious weed control on federal and tribal lands—State and county cooperation. (1) The state noxious weed control board shall:

(a) Work with the various federal and tribal land management agencies to coordinate state and federal noxious weed control;

(b) Encourage the various federal and tribal land management agencies to devote more time and resources to noxious weed control; and

(c) Assist the various federal and tribal land management agencies by seeking adequate funding for noxious weed control.

(2) County noxious weed control boards and weed districts shall work with the various federal and tribal land management agencies in each county in order to:

(a) Identify new noxious weed infestations;

(b) Outline and plan necessary noxious weed control actions;

(c) Develop coordinated noxious weed control programs; and

(d) Notify local federal and tribal agency land managers of noxious weed infestations.

(3) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter federal lands, with the approval of the appropriate federal agency, to survey for and control noxious weeds where control measures of a type and extent required under this chapter have not been taken.

(4) The department of agriculture, county noxious weed control boards, and weed districts may bill the federal land management agency that manages the land for all costs of the noxious weed control performed on federal land. If not paid by the federal agency that manages the land, the cost of the noxious weed control on federal land may be paid from any funds available to the county noxious weed control board or weed district that performed the noxious weed control. Alternatively, the costs of noxious weed control on federal land may be paid from any funds specifically appropriated to the department of agriculture for that purpose.

(5) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on federal or tribal lands.

(6) The department of agriculture, county noxious weed control boards, and weed districts shall consult with state agencies managing federal land concerning noxious weed infestation and control programs. [1997 c 353 § 34.]

17.10.205 Control of noxious weeds in open areas.

Open areas subject to the spread of noxious weeds, including but not limited to subdivisions, school grounds, playgrounds, parks, and rights-of-way shall be subject to regulation by activated county noxious weed control boards in the same manner and to the same extent as is provided for all terrestrial and aquatic lands of the state. [1997 c 353 § 24; 1975 1st ex.s. c 13 § 16.]

17.10.210 Quarantine of land—Order—Expense.

(1) Whenever the director, the county noxious weed control board, or a weed district finds that a parcel of land is so seriously infested with class A or class B noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the director, the county noxious weed control board, or weed district, with the approval of the director of the department of agriculture, may issue an order for the quarantine and restriction or denial of access or use. Upon issuance of the order, the director, the county noxious weed control board, or the weed district shall commence necessary control measures and may institute legal action for the collection of costs for control work, which may include attorneys' fees and the costs of other appropriate actions.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this chapter.

(3) The director shall, with the advice of the state noxious weed control board, determine how the expense of control work undertaken pursuant to this section, and the cost of any quarantine in connection therewith, is apportioned. [1997 c 353 § 25; 1987 c 438 § 22; 1969 ex.s. c 113 § 21.]

17.10.230 Violations—Penalty. Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control such weeds in accordance with this chapter and rules and regulations in force pursuant thereto; or any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210; or any person who interferes with the carrying out of the provisions of this chapter

has committed a civil infraction. [1987 c 438 § 23; 1979 c 118 § 2; 1969 ex.s. c 113 § 23.]

17.10.235 Selling product, article, or feed containing noxious weed seeds or toxic weeds—Penalty—Rules—Inspections—Fees.

(1) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds which shall be controlled in products, screenings, or articles to prevent the spread of noxious weeds. The rules shall identify the products, screenings, and articles in which the seeds must be controlled and the maximum amount of the seed to be permitted in the product, screenings, or article to avoid a hazard of spreading the noxious weed by seed from the product, screenings, or article. The director shall also adopt, with the advice of the state board, rules designating toxic weeds which shall be controlled in feed stuffs and screenings to prevent injury to the animal that consumes the feed. The rules shall identify the feed stuffs and screenings in which the toxic weeds must be controlled and the maximum amount of the toxic weed to be permitted in the feed. Rules developed under this section shall identify ways that products, screenings, articles, or feed stuffs containing noxious weed seeds or toxic weeds can be made available for beneficial uses.

(2) Any person who knowingly or negligently sells or otherwise distributes a product, article, screenings, or feed stuff designated by rule containing noxious weed seeds or toxic weeds designated for control by rule and in an amount greater than the amount established by the director for the seed or weed by rule is guilty of a misdemeanor.

(3) The department of agriculture shall, upon request of the buyer, inspect products, screenings, articles, or feed stuffs designated by rule and charge fees, in accordance with chapter 22.09 RCW, to determine the presence of designated noxious weed seeds or toxic weeds. [1997 c 353 § 26; 1987 c 438 § 30; 1979 c 118 § 4.]

17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates.

(1) The activated county noxious weed control board of each county shall annually submit a budget to the county legislative authority for the operating cost of the county's weed program for the ensuing fiscal year: PROVIDED, That if the board finds the budget approved by the legislative authority is insufficient for an effective county noxious weed control program it shall petition the county legislative authority to hold a hearing as provided in RCW 17.10.890. Control of weeds is a benefit to the lands within any such section. Funding for the budget is derived from any or all of the following:

(a) The county legislative authority may, in lieu of a tax, levy an assessment against the land for this purpose. Prior to the levying of an assessment the county noxious weed control board shall hold a public hearing at which it will gather information to serve as a basis for classification and then classify the lands into suitable classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forest lands, or federal lands. The board shall develop and forward to the county legislative authority, as a proposed level of assessment for each class, an amount as seems just. The assessment rate shall be either uniform per acre in its respective class or a flat rate per parcel rate plus a uniform

rate per acre: PROVIDED, That if no benefits are found to accrue to a class of land, a zero assessment may be levied. The county legislative authority, upon receipt of the proposed levels of assessment from the board, after a hearing, shall accept or modify by resolution, or refer back to the board for its reconsideration all or any portion of the proposed levels of assessment. The amount of the assessment constitutes a lien against the property. The county legislative authority may by resolution or ordinance require that notice of the lien be sent to each owner of property for which the assessment has not been paid by the date it was due and that each lien created be collected by the treasurer in the same manner as delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED FURTHER, That any collections for the lien shall not be considered as tax; or

(b) The county legislative authority may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the county legislative authority may make emergency appropriations as it deems necessary for the implementation of this chapter.

(2) Forest lands used solely for the planting, growing, or harvesting of trees and which are typified, except during a single period of five years following clear-cut logging, by canopies so dense as to prohibit growth of an understory may be subject to an annual noxious weed assessment levied by a county legislative authority that does not exceed one-tenth of the weighted average per acre noxious weed assessment levied on all other lands in unincorporated areas within the county that are subject to the weed assessment. This assessment shall be computed in accordance with the formula in subsection (3) of this section.

(3) The calculation of the "weighted average per acre noxious weed assessment" is a ratio expressed as follows:

(a) The numerator is the total amount of funds estimated to be collected from the per acre assessment on all lands except (i) forest lands as identified in subsection (2) of this section, (ii) lands exempt from the noxious weed assessment, and (iii) lands located in an incorporated area.

(b) The denominator is the total acreage from which funds in (a) of this subsection are collected. For lands of less than one acre in size, the denominator calculation may be based on the following assumptions: (i) Unimproved lands are calculated as being one-half acre in size on the average, and (ii) improved lands are calculated as being one-third acre in size on the average. The county legislative authority may choose to calculate the denominator for lands of less than one acre in size using other assumptions about average parcel size based on local information.

(4) For those counties that levy a per parcel assessment to help fund noxious weed control programs, the per parcel assessment on forest lands as defined in subsection (2) of this section shall not exceed one-tenth of the per parcel assessment on nonforest lands. [1997 c 353 § 27; 1995 c 374 § 77; 1987 c 438 § 31; 1975 1st ex.s. c 13 § 10; 1969 ex.s. c 113 § 24.]

Additional notes found at www.leg.wa.gov

17.10.250 Applications for noxious weed control funds. The legislative authority of any county with an activated noxious weed control board or the board of any weed district may apply to the director for noxious weed control funds when informed by the director that funds are available. Any applicant must employ adequate administrative personnel to supervise an effective weed control program as determined by the director with advice from the state noxious weed control board. The director with advice from the state noxious weed control board shall adopt rules on the distribution and use of noxious weed control account funds. [1997 c 353 § 28; 1987 c 438 § 32; 1975 1st ex.s. c 13 § 11; 1969 ex.s. c 113 § 25.]

17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to other acts. The administrative powers granted under this chapter to the director of the department of agriculture and to the state noxious weed control board shall be exercised in conformity with the provisions of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. The use of any substance to control noxious weeds shall be subject to the provisions of the water pollution control act, chapter 90.48 RCW, as now or hereafter amended, the Washington pesticide control act, chapter 15.58 RCW, and the Washington pesticide application act, chapter 17.21 RCW. [1987 c 438 § 33; 1969 ex.s. c 113 § 28.]

17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds. Each noxious weed control board may obtain such insurance or surety bonds, or both with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1987 c 438 § 34; 1974 ex.s. c 143 § 5.]

17.10.280 Lien for labor, material, equipment used in controlling noxious weeds. Every activated county noxious weed control board performing labor, furnishing material, or renting, leasing, or otherwise supplying equipment, to be used in the control of noxious weeds, or in causing control of noxious weeds, upon any property pursuant to the provisions of chapter 17.10 RCW has a lien upon such property for the labor performed, material furnished, or equipment supplied whether performed, furnished, or supplied with the consent of the owner, or his or her agent, of such property, or without the consent of said owner or agent. [2011 c 336 § 456; 1987 c 438 § 35; 1975 1st ex.s. c 13 § 13.]

17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien. Every county noxious weed control board furnishing labor, materials, or supplies or renting, leasing, or otherwise supplying equipment to be used in the control of noxious weeds upon any property pursuant to RCW 17.10.160 and 17.10.170 or pursuant to an order under RCW 17.10.210 as now or hereafter

amended, shall give to the owner or reputed owner or his or her agent a notice in writing, within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, which notice shall cover the labor, material, supplies, or equipment furnished or leased, as well as all subsequent labor, materials, supplies, or equipment furnished or leased, stating in substance and effect that such county noxious weed control board is furnishing or has furnished labor, materials and supplies or equipment for use thereon, with the name of the county noxious weed control board ordering the same, and that a lien may be claimed for all materials and supplies or equipment furnished by such county noxious weed control board for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner at his or her place of residence or reputed residence. [2011 c 336 § 457; 1987 c 438 § 36; 1975 1st ex.s. c 13 § 14.]

17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents. No lien created by RCW 17.10.280 exists, and no action to enforce the same shall be maintained, unless within ninety days from the date of cessation of the performance of the labor, furnishing of materials, or the supplying of equipment, a claim for the lien is filed for record as provided in this section, in the office of the county auditor of the county in which the property, or some part of the property to be affected by the claim for a lien, is situated. The claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the county noxious weed control board that performed the labor or caused the labor to be performed, furnished the material, or supplied the equipment, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, or his or her agent, and if the owner is not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the county noxious weed control board, and be verified by the oath of the county noxious weed control board, to the effect that the affiant believes that claim to be just; and the claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interest of third parties shall not be affected by such an amendment. [1997 c 353 § 29; 1975 1st ex.s. c 13 § 15.]

17.10.310 Notice of infraction—Issuance. The county noxious weed control board may issue a notice of civil infraction if after investigation it has reasonable cause to believe an infraction has been committed. A civil infraction may be issued pursuant to RCW 7.80.005, 7.80.070 through 7.80.110, 7.80.120 (3) and (4), and 7.80.130 through 7.80.900. [1997 c 353 § 30; 1987 c 438 § 24.]

17.10.350 Infraction—Penalty. (1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty not to exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and submit the sched-

ule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter is punishable as a misdemeanor. [2003 c 53 § 117; 1997 c 353 § 31; 1987 c 438 § 28.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

17.10.890 Deactivation of county noxious weed control board—Hearing. The following procedures shall be followed to deactivate a county noxious weed control board:

(1) The county legislative authority holds a hearing to determine whether there continues to be a need for an activated county noxious weed control board if:

(a) A petition is filed by one hundred registered voters within the county;

(b) A petition is filed by a county noxious weed control board as provided in RCW 17.10.240; or

(c) The county legislative authority passes a motion to hold such a hearing.

(2) Except as provided in subsection (4) of this section, the hearing shall be held within sixty days of final action taken under subsection (1) of this section.

(3) If, after a hearing, the county legislative authority determines that no need exists for a county noxious weed control board, due to the absence of class A or class B noxious weeds designated for control in the region, the county legislative authority shall deactivate the board.

(4) The county legislative authority shall not convene a hearing as provided for in subsection (1) of this section more frequently than once a year. [1997 c 353 § 32; 1987 c 438 § 37.]

17.10.900 Weed districts—Continuation—Dissolution—Transfer of assessment funds. Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, continues to operate under the provisions of the chapter under which it was formed: PROVIDED, That if ten percent of the landowners subject to any such weed district, and the county noxious weed control board upon its own motion, petition the county legislative authority for a dissolution of the weed district, the county legislative authority shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if the weed district will continue to operate under the chapter it was formed. The land area of any dissolved weed district becomes subject to the provisions of this chapter. Any district assessment funds may be transferred after the dissolution election under contract to the county noxious weed control board to fund the noxious weed control program. [1997 c 353 § 33; 1987 c 438 § 38; 1975 1st ex.s. c 13 § 12; 1969 ex.s. c 113 § 26.]

17.10.910 Severability—1969 ex.s. c 113. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the appli-

cation of the provision to other persons or circumstances is not affected. [1969 ex.s. c 113 § 27.]

**Chapter 17.12 RCW
AGRICULTURAL PEST DISTRICTS**

Sections

- 17.12.010 Pest districts authorized.
- 17.12.020 Petition—Notice—Hearing.
- 17.12.030 Determination—Boundaries of district.
- 17.12.040 Designation of district.
- 17.12.050 Treasurer—Tax levies.
- 17.12.060 Supervision of the district.
- 17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price.
- 17.12.100 Limit of indebtedness.

17.12.010 Pest districts authorized. For the purpose of destroying or exterminating squirrels, prairie dogs, gophers, moles or other rodents, or of rabbits or any predatory animals that destroy or interfere with the crops, fruit trees, shrubs, valuable plants, fodder, seeds or other agricultural plants or products, thing or pest injurious to any agricultural plant or product, or to prevent the introduction, propagation, growth or increase in number of any of the above described animals, or rodents, the board of county commissioners of any county may create a pest district or pest districts within such county and may enlarge any district containing a lesser territory than the whole county, or reduce any district already created, or combine or consolidate districts or divide, or create new districts from time to time in the manner hereinafter set forth. [1919 c 152 § 1; RRS § 2801.]

17.12.020 Petition—Notice—Hearing. Whenever ten or more resident freeholders in any county petition the board of county commissioners, asking that their lands be included, either separately or with other lands designated in the petition in a district to be formed for the purpose of preventing, destroying, or exterminating any of the animals, rodents or other such things described in RCW 17.12.010, or that such lands be included within a district already formed by the enlargement of such district, or a new district or districts be formed out of a district or districts then in existence or out of territory partly in districts already formed and not included in any district, and such petition indicating the boundaries of such proposed district, whether all or any part of such county, and stating the purpose of such district, the board shall fix a time for the hearing of such petition and shall give at least thirty days notice of the time and place of such hearing by posting copies of such notice of the time and place of such hearing in three conspicuous places within the proposed district and posting one copy of such notice at the court house or place of business of the board, and also by mailing to each freeholder within the proposed district a copy of such notice, to his last known residence, if known, and if not known to the clerk of such board, then and in that event the posting shall be deemed sufficient: PROVIDED, HOWEVER, If the board shall deem it impractical to mail notices to each freeholder, within the proposed district, or if the post office address of all the freeholders are not known, then in that event when recited in a resolution adopted by the board, the notice in addition to posting, shall be published once a week for three successive weeks in the county official paper if there is such, and if there

be no official paper, then in some paper published in said county, and if there be no paper published in said county, then in some paper of general circulation within the proposed district. The persons in whose name the property is assessed shall be deemed the owners thereof for the purpose of notice as herein required: PROVIDED, HOWEVER, That for lands belonging to the state, the commissioner of public lands shall be notified, and for lands belonging to the county, the county auditor shall be notified, and if such lands are under lease or conditional sale the lessee or purchaser shall also be notified in the manner above provided. Any person interested may appear at the time of such hearing and may under such rules and regulations as the board may prescribe give his or her reasons for or objections to the creation of such a district. [1919 c 152 § 2; RRS § 2802.]

17.12.030 Determination—Boundaries of district. Upon the hearing of such petition the board shall determine whether such a district shall be created and shall fix the boundaries thereof, but shall not enlarge the boundaries of proposed districts or enlarge or change the boundary or boundaries of any district or districts already formed without first giving the notice to all parties interested as provided in RCW 17.12.020. [1919 c 152 § 3; RRS § 2803.]

17.12.040 Designation of district. If the board shall deem the interests of the county or of any particular section thereof will be benefited by the creation of such a district or districts, or the changing thereof, it shall make a record thereof upon the minutes of the board and shall designate such territory in each such district as "Pest District for County". [1919 c 152 § 4; RRS § 2804.]

17.12.050 Treasurer—Tax levies. The county treasurer shall be ex officio treasurer for each of such districts so formed and the county assessor and other county officers shall take notice of the formation of such district or districts and shall be governed thereby according to the provisions of this chapter. The assessment or the tax levies as hereinafter provided for shall be extended on the tax rolls against the property liable therefor the same as other assessments or taxes are extended, and shall become a part of the general tax against such property and be collected and accounted for the same as other taxes are, with the terms and penalties attached thereto. The moneys so collected shall be held and disbursed as a special fund for such district and shall be paid out only on warrant issued by the county auditor upon voucher approved by the board of county commissioners. [1919 c 152 § 5; RRS § 2805.]

17.12.060 Supervision of the district. The agricultural expert in counties having an agricultural expert, shall under the direction of Washington State University have general supervision of the methods and means of preventing, destroying, or exterminating any animals or rodents as herein mentioned within his or her county, and of how the funds of any pest district shall be expended to best accomplish the purposes for which such funds were raised; in counties having no such agricultural expert each county commissioner shall be within his or her respective commissioner district, ex officio supervisor, or the board may designate some such person to

so act, and shall fix his or her compensation therefor. Whenever any member of the board shall act as supervisor he or she shall be entitled to his or her actual expenses and his or her per diem as county commissioner the same as if he or she were doing other county business. [2011 c 336 § 458; 1977 ex.s. c 169 § 4; 1919 c 152 § 6; RRS § 2806.]

Reviser's note: The law authorizing the employment of agricultural experts was 1913 c 18 as amended by 1919 c 193 but since repealed by 1949 c 181 which authorizes cooperative extension work in agriculture and home economics. See RCW 36.50.010.

Additional notes found at www.leg.wa.gov

17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price. Whenever there shall be included within any pest district lands belonging to the state or to the county the board of county commissioners shall determine the amount of the tax or assessment for which such land would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. A statement of the amounts due from state lands within each county shall be annually forwarded to the commissioner of public lands who shall examine the same and if he or she finds the same correct and that the determination was made according to law, he or she shall certify the same and issue a warrant for the payment of same against any funds in the state treasury appropriated for such purposes.

The commissioner of public lands shall keep a record of the amounts so paid on account of any state lands which are under lease or contract of sale and such amounts shall be added to and become a part of the annual rental or purchase price of the land, and shall be paid annually at the time of payment of rent or payment of interest or purchase price of such land. When such amounts shall be collected by the commissioner of public lands it shall be paid into the general fund in the state treasury. [2011 c 336 § 459; 1973 c 106 § 11; 1919 c 152 § 8; RRS § 2808. Formerly RCW 17.12.080 and 17.12.090.]

17.12.100 Limit of indebtedness. No district shall be permitted to contract obligations in excess of the estimated revenues for the two years next succeeding the incoming [incurring] of such indebtedness and it shall be unlawful for the county commissioners to approve of any bills which will exceed the revenue to any district which shall be estimated to be received by such district during the next two years. [1919 c 152 § 9; RRS § 2809.]

County budget as limitation on incurring liability: RCW 36.40.100.

**Chapter 17.15 RCW
INTEGRATED PEST MANAGEMENT**

Sections

- 17.15.005 Legislative declaration.
- 17.15.010 Definitions.
- 17.15.020 Implementation of integrated pest management practices.
- 17.15.030 Integrated pest management training—Designated coordinator.

17.15.005 Legislative declaration. The legislature declares that it is the policy of the state of Washington to require all state agencies that have pest control responsibilities to follow the principles of integrated pest management. [1997 c 357 § 1.]

17.15.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Integrated pest management" means a coordinated decision-making and action process that uses the most appropriate pest control methods and strategy in an environmentally and economically sound manner to meet agency programmatic pest management objectives. The elements of integrated pest management include:
 - (a) Preventing pest problems;
 - (b) Monitoring for the presence of pests and pest damage;
 - (c) Establishing the density of the pest population, that may be set at zero, that can be tolerated or correlated with a damage level sufficient to warrant treatment of the problem based on health, public safety, economic, or aesthetic thresholds;
 - (d) Treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical, and chemical control methods and that must consider human health, ecological impact, feasibility, and cost-effectiveness; and
 - (e) Evaluating the effects and efficacy of pest treatments.
- (2) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director of the department of agriculture may declare to be a pest. [1997 c 357 § 2.]

17.15.020 Implementation of integrated pest management practices. Each of the following state agencies or institutions shall implement integrated pest management practices when carrying out the agency's or institution's duties related to pest control:

- (1) The department of agriculture;
- (2) The state noxious weed control board;
- (3) The department of ecology;
- (4) The department of fish and wildlife;
- (5) The department of transportation;
- (6) The parks and recreation commission;
- (7) The department of natural resources;
- (8) The department of corrections;
- (9) The *department of general administration; and
- (10) Each state institution of higher education, for the institution's own building and grounds maintenance. [1997 c 357 § 3.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

17.15.030 Integrated pest management training—Designated coordinator. (1) A state agency or institution listed in RCW 17.15.020 shall provide integrated pest man-

agement training for employees responsible for pest management.

(2) A state agency or institution listed in RCW 17.15.020 shall designate an integrated pest management coordinator. [2011 c 103 § 36; 1997 c 357 § 4.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Chapter 17.21 RCW

WASHINGTON PESTICIDE APPLICATION ACT

Sections

17.21.010	Declaration of police power and purpose.
17.21.020	Definitions.
17.21.030	Director's authority—Rules.
17.21.040	Rules subject to administrative procedure act.
17.21.050	Hearings—Administrative procedure act.
17.21.060	Subpoenas—Witness fees.
17.21.065	Classification of licenses.
17.21.070	Commercial pesticide applicator license—Requirements.
17.21.080	Commercial pesticide applicator license—Application—Form.
17.21.091	Commercial pesticide applicator license—Persons who may apply under license authority.
17.21.100	Recordkeeping by licensees and agricultural users.
17.21.110	Commercial pesticide operator license—Requirements.
17.21.122	Private-commercial pesticide applicator license—Requirements.
17.21.126	Private applicator, limited private applicator, or rancher private applicator—Requirements—Application for license—Fees.
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17.21.440	Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of labor and industries.
17.21.900	Preexisting liabilities not affected.
17.21.920	Short title.
17.21.930	Severability—1961 c 249.
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(2012 Ed.)

17.21.010 Declaration of police power and purpose.

The application and the control of the use of various pesticides is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be affected with the public interest. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1967 c 177 § 1; 1961 c 249 § 1.]

Washington pesticide control act: Chapter 15.58 RCW.

17.21.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Agricultural land" means land on which an agricultural commodity is produced or land that is in a government-recognized conservation reserve program. This definition does not apply to private gardens where agricultural commodities are produced for personal consumption.

(3) "Antimicrobial pesticide" means a pesticide that is used for the control of microbial pests, including but not limited to viruses, bacteria, algae, and protozoa, and is intended for use as a disinfectant or sanitizer.

(4) "Apparatus" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(5) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(6) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, private applicator, limited private applicator, rancher private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA or the director as a restricted use pesticide.

(7) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(8) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or

supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(10) "Department" means the Washington state department of agriculture.

(11) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(12) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(13) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision and shall require that the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during the application. However, direct supervision for forest application does not require constant voice and visual contact when general use pesticides are applied using nonapparatus type equipment, the certified applicator is physically present and readily available in the immediate application area, and the certified applicator directly observes pesticide mixing and batching. Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(14) "Director" means the director of the department or a duly authorized representative.

(15) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(16) "EPA" means the United States environmental protection agency.

(17) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(18) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(19) "Forest application" means the application of pesticides to agricultural land used to grow trees for the commercial production of wood or wood fiber for products such as dimensional lumber, shakes, plywood, poles, posts, pilings, particle board, hardboard, oriented strand board, pulp, paper, cardboard, or other similar products.

(20) "Fumigant" means any pesticide product or combination of products that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

(21) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and yeasts, except those on or in a living person or other animals.

(22) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(23) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant.

(24) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

(25) "Insect" means any small invertebrate animal, in any life stage, whose adult form is segmented and which generally belongs to the class insecta, comprised of six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies. The term insect shall also apply to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(26) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect.

(27) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

(28) "Landscape application" means an application of any EPA registered pesticide to any exterior landscape area around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by private applicators, limited private applicators, or rancher private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

(29) "Limited private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in this section, of the use of any herbicide classified by the EPA or the director as a restricted use pesticide, for the sole purpose of controlling weeds on nonproduction agricultural land owned or rented by the applicator or the applicator's employer. Limited private applicators may also use restricted use pesticides on timber areas, excluding aquatic sites, to control weeds designated for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state and local regulations adopted under chapters 17.04, 17.06, and 17.10 RCW. A limited private applicator may apply restricted use herbicides to the types of land described in this subsection of another person if applied without compensation other than trading of personal services between the applicator and the other person. This license is only valid when making applications in counties of Washington located east of the crest of the Cascade mountains.

(30) "Limited production agricultural land" means land used to grow hay and grain crops that are consumed by the

livestock on the farm where produced. No more than ten percent of the hay and grain crops grown on limited production agricultural land may be sold each crop year. Limited production agricultural land does not include aquatic sites.

(31) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(32) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eel-worms.

(33) "Nonproduction agricultural land" means pastures, rangeland, fencerows, and areas around farm buildings but not aquatic sites.

(34) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(35) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest.

(36) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant as defined in RCW 15.58.030.

(37) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(38) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(39) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

(40) "Rancher private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in this section, of the use of any herbicide or any rodenticide classified by the EPA or the director as a restricted use pesticide for the purpose of controlling weeds and pest animals on nonproduction agricultural land and limited production agricultural land owned or rented by the

applicator or the applicator's employer. Rancher private applicators may also use restricted use pesticides on timber areas, excluding aquatic sites, to control weeds designated for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state and local regulations adopted under chapters 17.04, 17.06, and 17.10 RCW. A rancher private applicator may apply restricted use herbicides and rodenticides to the types of land described in this subsection of another person if applied without compensation other than trading of personal services between the applicator and the other person. This license is only valid when making applications in counties of Washington located east of the crest of the Cascade mountains.

(41) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

(42) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(43) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(44) "School facility" means any facility used for licensed day care center purposes or for the purposes of a public kindergarten or public elementary or secondary school. School facility includes the buildings or structures, playgrounds, landscape areas, athletic fields, school vehicles, or any other area of school property.

(45) "Snails or slugs" include all harmful mollusks.

(46) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(47) "Weed" means any plant which grows where it is not wanted. [2010 1st sp.s. c 7 § 134; 2004 c 100 § 1; 2002 c 122 § 2; (2002 c 122 § 1 expired July 1, 2002); 2001 c 333 § 1; 1994 c 283 § 1; 1992 c 176 § 1; 1989 c 380 § 33; 1979 c 92 § 1; 1971 ex.s. c 191 § 1; 1967 c 177 § 2; 1961 c 249 § 2.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—2004 c 100: "This act takes effect January 1, 2005." [2004 c 100 § 7.]

Effective dates—2002 c 122: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002].

(2) Section 2 of this act takes effect July 1, 2002." [2002 c 122 § 3.]

Expiration date—2002 c 122 § 1: "Section 1 of this act expires July 1, 2002." [2002 c 122 § 4.]

***Reviser's note:** Section 7 of this act was vetoed.

Additional notes found at www.leg.wa.gov

17.21.030 Director's authority—Rules. The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter.

(1) The director may adopt rules:

(a) Governing the loading, mixing, application and use, or prohibiting the loading, mixing, application, or use of any pesticide;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas as prescribed by the director in the state;

(c) Providing that any or all restricted use pesticides shall be purchased, possessed or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit;

(d) Establishing recordkeeping requirements for licensees, permittees, and certified applicators;

(e) Fixing and collecting examination fees and fees for recertification course sponsorship;

(f) Establishing testing procedures, licensing classifications, and requirements for licenses and permits, and criteria for assigning recertification credit to and procedures for department approval of courses as provided by this chapter;

(g) Concerning training by employers for employees who mix and load pesticides;

(h) Concerning minimum performance standards for spray boom and nozzles used in pesticide applications to minimize spray drift and establishing a list of approved spray nozzles that meet these standards; and

(i) Fixing and collecting permit fees.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter. [1994 c 283 § 2; 1989 c 380 § 34; 1987 c 45 § 26; 1979 c 92 § 2; 1961 c 249 § 3.]

Additional notes found at www.leg.wa.gov

17.21.040 Rules subject to administrative procedure act. All rules adopted under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended, concerning the adoption of rules. [1989 c 380 § 35; 1961 c 249 § 4.]

17.21.050 Hearings—Administrative procedure act. All hearings for the imposition of a civil penalty and/or the suspension, denial, or revocation of a license, certification, or permit issued under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1994 c 283 § 3. Prior: 1989 c 380 § 36; 1989 c 175 § 58; 1985 c 158 § 4; 1961 c 249 § 5.]

Additional notes found at www.leg.wa.gov

17.21.060 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, certification, or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1994 c 283 § 4; 1961 c 249 § 6.]

17.21.065 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter. These classifications may include but are not limited to pest control operators, ornamental sprayers, agricultural crop sprayers or right-of-way sprayers; separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides.

Each such classification shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section, except as provided for in RCW 17.21.110. [1994 c 283 § 5; 1967 c 177 § 17.]

17.21.070 Commercial pesticide applicator license—Requirements. It is unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for a commercial applicator license must be accompanied by a fee of two hundred fifteen dollars and in addition a fee of twenty-seven dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides. [2008 c 285 § 21; 1997 c 242 § 11; 1994 c 283 § 6; 1993 sp.s. c 19 § 4; 1991 c 109 § 30; 1989 c 380 § 37; 1981 c 297 § 21; 1967 c 177 § 3; 1961 c 249 § 7.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

17.21.080 Commercial pesticide applicator license—Application—Form. Application for a commercial pesticide applicator license provided for in RCW 17.21.070 shall be on a form prescribed by the director.

(1) The application shall include the following information:

(a) The full name of the individual applying for such license.

(b) The full name of the business the individual represents with the license.

(c) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or any other organized group of persons whether incorporated or not, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group.

(d) The principal business address of the applicant in the state or elsewhere.

(e) The name of a person whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(f) The model, make, horsepower, and size of any apparatus used by the applicant to apply pesticides.

(g) License classification or classifications for which the applicant is applying.

(h) A list of the names of individuals allowed to apply pesticides under the authority of the commercial applicator's license.

(i) Any other necessary information prescribed by the director.

(2) Any changes to the information provided on the prescribed commercial applicator form shall be reported by the business to the department within thirty days of the change. [1994 c 283 § 7; 1989 c 380 § 38; 1967 c 177 § 4; 1961 c 249 § 8.]

17.21.091 Commercial pesticide applicator license—Persons who may apply under license authority. (1) No commercial pesticide applicator shall allow a person to apply pesticides under the authority of the commercial pesticide applicator's license unless the commercial pesticide applicator has, by mail or facsimile transmissions, submitted the name to the department on a form prescribed by the department as provided in RCW 17.21.080(2). The department shall maintain a list for each commercial pesticide applicator of persons authorized to apply pesticides under the authority of the commercial pesticide applicator's license.

(2) Violations of this chapter by a person acting as an employee, agent, or otherwise acting on behalf of or under the license authority of a commercial pesticide applicator, may, in the discretion of the department, be treated as a violation by the commercial pesticide applicator. [1994 c 283 § 8.]

17.21.100 Recordkeeping by licensees and agricultural users. (1) Certified applicators licensed under the provisions of this chapter, persons required to be licensed under this chapter, all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, and all other persons making landscape applications of pesticides to types of property listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each application which shall include the following information:

(a) The location of the land where the pesticide was applied;

(b) The year, month, day and beginning and ending time of the application of the pesticide each day the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide which was applied;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which the pesticide was applied;

(h) The licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application and their license number, if applicable;

(i) The direction and estimated velocity of the wind during the time the pesticide was applied. This subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director in rule.

(2)(a) The required information shall be recorded on the same day that a pesticide is applied.

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

(3) The records required under this section shall be maintained and preserved by the licensed pesticide applicator or such other person or entity applying the pesticides for no less than seven years from the date of the application of the pesticide to which such records refer. If the pesticide was applied by a commercial pesticide applicator to the agricultural crop or agricultural lands of a person who employs one or more employees, as "employee" is defined in RCW 49.70.020, the records shall also be kept by the employer for a period of seven years from the date of the application of the pesticide to which the records refer.

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) Copies of records provided to a person or entity under this subsection (4) shall, if so requested, be provided on a form adopted under subsection (7) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

(6) The department shall include inspection of the records required under this section as part of any on-site inspection conducted under this chapter on agricultural lands. The inspection shall determine whether the records are readily transferable to a form adopted by the department and are readily accessible to employees. However, no person

subject to a department inspection may be inspected under this subsection (6) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (6) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(7) The department of agriculture and the department of labor and industries shall jointly adopt, by rule, forms that satisfy the information requirements of this section. [2011 c 103 § 37; 1994 c 283 § 9; 1992 c 173 § 1; 1989 c 380 § 39; 1987 c 45 § 28; 1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

17.21.110 Commercial pesticide operator license—Requirements. It is unlawful for any person to act as an employee of a commercial pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under this chapter for the application of any pesticide, without having obtained a commercial pesticide operator license from the director. The commercial pesticide operator license is in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a commercial operator license must be accompanied by a fee of sixty-seven dollars. This section does not apply to any individual who is a licensed commercial pesticide applicator. [2008 c 285 § 22; 1997 c 242 § 12; 1994 c 283 § 10; 1993 sp.s. c 19 § 5; 1992 c 170 § 5; 1991 c 109 § 31; 1989 c 380 § 40; 1981 c 297 § 22; 1967 c 177 § 6; 1961 c 249 § 11.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

17.21.122 Private-commercial pesticide applicator license—Requirements. It is unlawful for any person to act as a private-commercial pesticide applicator without having obtained a private-commercial pesticide applicator license from the director. Application for a private-commercial pesticide applicator license must be accompanied by a fee of thirty-three dollars. [2008 c 285 § 23; 1997 c 242 § 13; 1994 c 283 § 11; 1993 sp.s. c 19 § 6; 1992 c 170 § 6; 1991 c 109 § 32; 1989 c 380 § 41; 1979 c 92 § 6.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

17.21.126 Private applicator, limited private applicator, or rancher private applicator—Requirements—Application for license—Fees. It is unlawful for any person to act as a private applicator, limited private applicator, or rancher private applicator without first complying with requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment,

including injury to the pesticide applicator or other persons, for each specific pesticide use.

(1) Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides for which the private applicator, limited private applicator, or rancher private applicator is certified must be relative to hazards of the particular type of application, class of pesticides, or handling procedure. In determining these standards the director must take into consideration standards of the EPA and is authorized to adopt these standards by rule.

(2) Application for a private applicator or a limited private applicator license must be accompanied by a fee of thirty-three dollars. Application for a rancher private applicator license must be accompanied by a fee of one hundred dollars. Individuals with a valid certified applicator license, pest control consultant license, or dealer manager license who qualify in the appropriate statewide or agricultural license categories are exempt from the private applicator, limited private applicator, or rancher private applicator fee requirements. However, licensed public pesticide operators, otherwise exempted from the public pesticide operator license fee requirement, are not also exempted from the fee requirements under this subsection. [2008 c 285 § 24; 2004 c 100 § 2; 1997 c 242 § 14; 1994 c 283 § 12; 1993 sp.s. c 19 § 7; 1992 c 170 § 7; 1991 c 109 § 33; 1989 c 380 § 42; 1979 c 92 § 8.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Effective date—2004 c 100: See note following RCW 17.21.020.

Additional notes found at www.leg.wa.gov

17.21.128 Renewal of certificate or license—Recertification standards. (1) The director may renew any certification or license issued under authority of this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to apply pesticides.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Licensed pesticide applicators may qualify for continued licensure through accumulation of recertification credits.

(i) Private applicators shall accumulate a minimum of twenty department-approved credits every five years with no more than ten credits allowed per year;

(ii) Limited private applicators shall accumulate a minimum of eight department-approved credits every five years. All credits must be applicable to the control of weeds with at least one-half of the credits directly related to weed control and the remaining credits in topic areas indirectly related to weed control, such as the safe and legal use of pesticides;

(iii) Rancher private applicators shall accumulate a minimum of twelve department-approved credits every five years;

(iv) All other license types established under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Certified pesticide applicators may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the requirements identified in subsection (2) of this section if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency approved government agency plan. [2005 c 397 § 1; 2004 c 100 § 3; 1994 c 283 § 13; 1986 c 203 § 9; 1979 c 92 § 9.]

Effective date—2004 c 100: See note following RCW 17.21.020.

Additional notes found at www.leg.wa.gov

17.21.129 Demonstration and research license—Requirements. Except as provided in RCW 17.21.203, it is unlawful for a person to use or supervise the use of any experimental use pesticide or any restricted use pesticide on small experimental plots for research purposes when no charge is made for the pesticide and its application without a demonstration and research applicator's license.

(1) Application for a demonstration and research license must be accompanied by a fee of thirty-three dollars.

(2) Persons licensed under this section are exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180. [2008 c 285 § 25; 1997 c 242 § 15; 1994 c 283 § 14; 1993 sp.s. c 19 § 8; 1992 c 170 § 8; 1991 c 109 § 34; 1989 c 380 § 43; 1987 c 45 § 30; 1981 c 297 § 26.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

17.21.130 Revocation, suspension, or denial. Any license, permit, or certification provided for in this chapter may be revoked or suspended, and any license, permit, or certification application may be denied by the director for cause. If the director suspends a license under this chapter with respect to activity of a continuing nature under chapter 34.05 RCW, the director may elect to suspend the license for a subsequent license year during a period that coincides with the period commencing thirty days before and ending thirty days after the date of the incident or incidents giving rise to the violation.

The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58

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§ 877; 1994 c 283 § 15; 1989 c 380 § 46; 1986 c 203 § 10; 1961 c 249 § 13.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

17.21.132 License, certification—Applications—Expiration dates. Any person applying for a license or certification authorized under the provisions of this chapter shall file an application on a form prescribed by the director.

(1) The application shall state the license or certification and the classification(s) for which the applicant is applying and the method in which the pesticides are to be applied.

(2) For all classes of licenses except private applicator, limited private applicator, and rancher private applicator, all applicants shall be at least eighteen years of age on the date that the application is made. Applicants for a private applicator, limited private applicator, or rancher private applicator license shall be at least sixteen years of age on the date that the application is made.

(3) Application for a license to apply pesticides shall be accompanied by the required fee. No license may be issued until the required fee has been received by the department.

(4) Each classification of license issued under this chapter except the limited private applicator and the rancher private applicator expires annually on a date set by rule by the director. Limited and rancher private applicator licenses expire on the fifth December 31st after issuance. Renewal applications shall be filed on or before the applicable expiration date. [2004 c 100 § 4; 1997 c 242 § 16; 1994 c 283 § 16; 1991 c 109 § 35; 1989 c 380 § 44.]

Effective date—2004 c 100: See note following RCW 17.21.020.

17.21.134 Licenses—Examination requirements. (1) The director shall not issue a commercial pesticide applicator license until the applicant, if he or she is the sole owner and manager of the business has passed examinations in all classifications that the business operates. If there is more than one owner or the owner does not participate in the pesticide application activities, the person managing the pesticide application activities of the business shall be licensed in all classifications that the business operates. The director shall not issue a commercial pesticide operator, public operator, private commercial applicator, or demonstration and research applicator license until the applicant has passed an examination demonstrating knowledge of:

(a) How to apply pesticides under the classification for which he or she has applied, manually or with the various apparatuses that he or she may operate;

(b) The nature and effect of pesticides he or she may apply under such classifications; and

(c) Any other matter the director determines to be a necessary subject for examination.

(2) The director shall charge an examination fee established by rule when an examination is necessary before a license may be issued or when application for such license

and examination is made at other than a regularly scheduled examination date.

(3) The director may prescribe separate testing procedures and requirements for each license. [1994 c 283 § 17; 1989 c 380 § 45.]

17.21.140 Renewal—Delinquency. (1) If the application for renewal of any license provided for in this chapter is not filed on or prior to the expiration date of the license under this chapter or as set by rule by the director, a penalty of twenty-five dollars for the commercial pesticide applicator's license and the rancher private applicator license, and a penalty equivalent to the license fee for any other license, shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. However, the penalty does not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(2) Any license for which a timely renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [2004 c 100 § 5; 1991 c 109 § 36; 1989 c 380 § 47; 1961 c 249 § 14.]

Effective date—2004 c 100: See note following RCW 17.21.020.

17.21.150 Violation of chapter—Unlawful acts. A person who has committed any of the following acts is declared to be in violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Applied worthless or improper pesticides;

(3) Operated a faulty or unsafe apparatus;

(4) Operated in a faulty, careless, or negligent manner;

(5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director including a final order of the director directing payment of a civil penalty. In an adjudicative proceeding arising from the department's denial of a license for failure to pay a civil penalty the subject shall be limited to whether the payment was made and the proceeding may not be used to collaterally attack the final order;

(6) Refused or neglected to keep and maintain the pesticide application records required by rule, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Acted as a certified applicator without having provided direct supervision to an unlicensed person;

(9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;

(10) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he or she operates or has operated, regardless of whether or not he or she has previously passed a pesticide license examination;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade

the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Knowingly made false, misleading, or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or investigation;

(14) Impersonated any state, county or city inspector or official;

(15) Applied a restricted use pesticide without having a certified applicator in direct supervision;

(16) Operated a commercial pesticide application business: (a) Without an individual licensed as a commercial pesticide applicator or (b) with a licensed commercial pesticide applicator not licensed in the classification or classifications in which the business operates; or

(17) Operated as a commercial pesticide applicator without meeting the financial responsibility requirements including not having a properly executed financial responsibility insurance certificate or surety bond form on file with the department. [2011 c 103 § 12; 1994 c 283 § 18; 1989 c 380 § 48; 1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

Purpose—2011 c 103: See note following RCW 15.26.120.

17.21.160 Commercial pesticide applicator license—Financial responsibility. The director shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility.

(1) Evidence of financial responsibility shall consist of either a surety bond; or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant. The surety bond or liability insurance policy need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant. The director shall not accept a surety bond or liability insurance policy except from authorized insurers in this state or if placed as a surplus line as provided for in chapter 48.15 RCW.

(2) Evidence of financial responsibility shall be supplied to the department on a financial responsibility insurance certificate or surety bond form (blank forms supplied by the department to the applicant). [1994 c 283 § 19; 1989 c 380 § 49; 1967 c 177 § 9; 1961 c 249 § 16.]

17.21.170 Commercial pesticide applicator license—Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer. The following requirements apply to the amount of bond or insurance required for commercial applicators:

(1) The amount of the surety bond or liability insurance, as provided for in RCW 17.21.160, shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. The surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period.

(2) The property damage portion of this requirement may be waived by the director if it can be demonstrated by the applicant that all applications performed under this license occur under confined circumstances and on property owned or leased by the applicant.

(3) The director shall be notified ten days before any reduction of insurance coverage at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer and by the insured.

(4) The total and aggregate of the surety and insurer for all claims is limited to the face of the bond or liability insurance policy. The director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five thousand dollars for all applicators for the total amount of liability insurance or surety bond required by this section, but if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the applicant furnishes the director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his or her application of pesticides. [2011 c 336 § 460; 1994 c 283 § 20; 1983 c 95 § 7; 1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

17.21.180 Commercial pesticide applicator license—Suspension of license for failure to meet financial responsibility criteria. The commercial pesticide applicator license shall, whenever the licensee's surety bond or insurance policy is reduced below the requirements of RCW 17.21.170 or whenever the commercial applicator has not supplied evidence of financial responsibility, as required by RCW 17.21.160 and 17.21.170, by the expiration date of the previous policy or surety bond, be automatically suspended until such licensee's surety bond or insurance policy again meets the requirements of RCW 17.21.170. In addition, the director may pick up such licensee's license plates during such period of automatic suspension and return them only at such time as the licensee has furnished written proof that he or she is in compliance with the provisions of RCW 17.21.170. [1994 c 283 § 21; 1989 c 380 § 50; 1987 c 45 § 31; 1967 c 177 § 11; 1961 c 249 § 18.]

Additional notes found at www.leg.wa.gov

17.21.190 Damages due to use or application of pesticide—Report of loss required. Any person suffering property loss or damage resulting from the use or application by others of any pesticide shall file with the director a verified report of loss.

(1) The report shall set forth, so far as known to the claimant, the following:

- (a) The name and address of the claimant;
- (b) The type, kind, property alleged to be injured or damaged;
- (c) The name of the person applying the pesticide and allegedly responsible; and
- (d) The name of the owner or occupant of the property for whom such application of the pesticide was made.

(2) The report shall be filed within thirty days from the time that the property loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report shall be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from

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immediate to forty-eight hours to initiate an investigation, depending on the severity of the damage.

(3) Any person filing a report of loss under this section shall cooperate with the department in conducting an investigation of such a report and shall provide the department or authorized representatives of the department access to any affected property and any other necessary information relevant to the report. If a claimant refuses to cooperate with the department, the report shall not be acted on by the department.

(4) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

(5) The failure to file a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one suffering loss from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to act upon the complaint. [1994 c 283 § 22; 1991 c 263 § 1; 1989 c 380 § 51; 1961 c 249 § 19.]

17.21.200 Commercial pesticide applicator license—Exemptions. The provisions of this chapter relating to commercial pesticide applicator licenses and requirements for their issuance shall not apply to:

(1) Any forest landowner, or his or her employees, applying pesticides with ground apparatus or manually, on his or her own lands or any lands or rights-of-way under his or her control; or

(2) Any farmer owner of ground apparatus applying pesticides for himself or herself or if applied on an occasional basis not amounting to a principal or regular occupation without compensation other than trading of personal services between producers of agricultural commodities on the land of another person; or

(3) Any grounds maintenance person conducting grounds maintenance on an occasional basis not amounting to a regular occupation; or

(4) Persons who apply pesticides as an incidental part of their business, such as dog grooming services or such other businesses as shall be identified by the director.

However, persons exempt under this section shall not use restricted use pesticides and shall not advertise or publicly hold themselves out as pesticide applicators. [1994 c 283 § 23; 1992 c 170 § 9; 1989 c 380 § 52; 1979 c 92 § 3; 1971 ex.s. c 191 § 5; 1967 c 177 § 12; 1961 c 249 § 20.]

17.21.203 Government research personnel—Requirements. The licensing provisions of this chapter shall not apply to research personnel of federal, state, county, or municipal agencies when performing pesticide research in their official capacities, however when such persons are applying restricted use pesticides, they shall be licensed as public operators. [1994 c 283 § 24; 1981 c 297 § 23; 1979 c 92 § 4; 1971 ex.s. c 191 § 9.]

Additional notes found at www.leg.wa.gov

17.21.220 Application of chapter to governmental entities—Public operator license required—Exemption—Liability. (1) All state agencies, municipal corporations, and

public utilities or any other governmental agencies are subject to this chapter and its rules.

(2) It is unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any restricted use pesticide, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. Application for a public operator license must be accompanied by a fee of thirty-three dollars. The fee does not apply to public operators licensed and working in the health vector field. The public operator license is valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides that are not restricted use pesticides to control pests other than weeds.

(4) Agencies, municipal corporations, and public utilities are subject to legal recourse by any person damaged by such application of any pesticide, and action may be brought in the county where the damage or some part of the damage occurred. [2008 c 285 § 26; 1997 c 242 § 17; 1994 c 283 § 25; 1993 sp.s. c 19 § 9; 1991 c 109 § 37; 1989 c 380 § 53; 1986 c 203 § 11; 1981 c 297 § 24; 1971 ex.s. c 191 § 7; 1967 c 177 § 13; 1961 c 249 § 22.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Additional notes found at www.leg.wa.gov

17.21.280 Disposition of revenue, enforcement of chapter—District court fees, fines, penalties and forfeitures. (1) Except as provided in subsection (2) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in the agricultural local fund, RCW 43.23.230, for use exclusively in the enforcement of this chapter.

(2) All moneys collected for civil penalties levied under RCW 17.21.315 shall be deposited in the state general fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW. [1997 c 242 § 18; 1994 c 283 § 29; 1989 c 380 § 59; 1987 c 202 § 183; 1969 ex.s. c 199 § 15; 1961 c 249 § 28.]

Intent—1987 c 202: See note following RCW 2.04.190.

17.21.290 Pesticide application apparatuses—License plate as identification. All licensed apparatuses shall be identified by a license plate furnished by the director, at no cost to the licensee, which plate shall be affixed in a location and manner upon such apparatus as prescribed in rule. [1994 c 283 § 30; 1989 c 380 § 60; 1967 c 177 § 15; 1961 c 249 § 29.]

17.21.300 Agreements with other governmental entities. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1961 c 249 § 30.]

17.21.305 Licensing by cities of first class and counties. The provisions of this chapter requiring all structural pest control operators, exterminators and fumigators to license with the department shall not preclude a city of the first class with a population of one hundred thousand people or more, or the county in which it is situated, from also licensing structural pest control operators, exterminators and fumigators operating within the territorial confines of said city or county: PROVIDED, That when structural pest control operators, exterminators and fumigators are licensed by both the city of the first class and the county in which the city is situated, and there exists a joint county-city health department, then the joint county-city health department may enforce the provisions of the city and county as to the license requirements for the structural pest control operators, exterminators and fumigators. [1986 c 203 § 12; 1967 c 177 § 19.]

Additional notes found at www.leg.wa.gov

17.21.310 General penalty. (1) Except as provided in subsection (2) of this section, any person who violates any provisions or requirements of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent offense is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 118; 1967 c 177 § 16; 1961 c 249 § 34.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

17.21.315 Civil penalty for failure to comply with chapter. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 61; 1985 c 158 § 3.]

17.21.320 Access to public or private premises—Search warrants—Prosecuting attorney's duties—Injunctions. (1) For purpose of carrying out the provisions of this chapter the director may enter upon any public or private premises at reasonable times, in order:

(a) To have access for the purpose of inspecting any equipment subject to this chapter and such premises on which such equipment is kept or stored;

(b) To inspect lands actually or reported to be exposed to pesticides;

(c) To inspect storage or disposal areas;

(d) To inspect or investigate complaints of injury to humans or land; or

(e) To sample pesticides being applied or to be applied.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application, issue the search warrant for the purposes requested.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(4) The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in the superior court of the county in which such violation occurs or is about to occur. [1989 c 380 § 62; 1971 ex.s. c 191 § 10.]

17.21.340 Violation of chapter—Remedies. (1) A person aggrieved by a violation of this chapter or the rules adopted under this chapter:

(a) May request an inspection of the area in which the violation is believed to have occurred. If there are reasonable grounds to believe that a violation has occurred, the department shall conduct an inspection as soon as practicable. However, the director may refuse to act on a request for inspection concerning only property loss or damage if the person suffering property damage fails to file a timely report of loss under RCW 17.21.190. If an inspection is conducted, the person requesting the inspection shall:

(i) Be promptly notified in writing of the department's decision concerning the assessment of any penalty pursuant to the inspection; and

(ii) Be entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available pursuant to this chapter: PROVIDED, That in any appeal proceeding the identity of the aggrieved person who requests the inspection shall be disclosed to the alleged violator of the act upon request of the alleged violator;

(b) Shall be notified promptly, on written application to the director, of any penalty or other action taken by the department pursuant to an investigation of the violation under this chapter; and

(c) May request, within ten days from the service of a final order fixing a penalty for the violation, that the director reconsider the entire matter if it is alleged that the penalty is inappropriate. If the person is aggrieved by a decision of the director on reconsideration, the person may request an adjudicative proceeding under chapter 34.05 RCW. However, the procedures for a brief adjudicative proceeding may not be used unless agreed to by the person requesting the adjudicative proceeding. During the adjudicative proceeding under (c) of this subsection, the presiding officer shall consider the interests of the person requesting the adjudicative proceeding.

(2) Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 63.]

17.21.350 Report to legislature. By February 1st of each year the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report shall include, at a minimum: (1) A review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the num-

ber and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program with information on the food samples tested and results of the tests, a listing of the pesticides for which testing is done, and other pertinent information. [1997 c 242 § 19; 1989 c 380 § 64.]

17.21.400 Landscape or right-of-way applications—Notice. (1)(a) A certified applicator making a landscape application shall display the name and telephone number of the applicator or the applicator's employer on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(b) A certified applicator making a right-of-way application shall display the name and telephone number of the applicator or the applicator's employer and the words "VEGETATION MANAGEMENT APPLICATION" on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(2) If a certified applicator receives a written request for information on a landscape or right-of-way spray application, the applicator shall provide the requestor with the name or names of each pesticide applied and (a) a copy of the material safety data sheet for each pesticide; or (b) a pesticide fact sheet for each pesticide as developed or approved by the department.

(3) The director shall adopt rules establishing the size and lettering requirements of the apparatus display signs required under this section. [1994 c 283 § 32; 1992 c 176 § 2.]

17.21.410 Landscape applications—Marking of property, posting requirements. (1) A certified applicator making a landscape application to:

(a) Residential property shall at the time of the application place a marker at the usual point of entry to the property. If the application is made to an isolated spot that is not a substantial portion of the property, the applicator shall only be required to place a marker at the application site. If the application is in a fenced or otherwise isolated backyard, no marker is required.

(b) Commercial properties such as apartments or shopping centers shall at the time of application place a marker in a conspicuous location at or near each site being treated.

(c) A golf course shall at the time of the application place a marker at the first tee and tenth tee or post the information in a conspicuous location such as on a central message board.

(d) A school, nursery school, or licensed day care shall at the time of the application place a marker at each primary point of entry to the school grounds. A school employee making an application to a school facility shall comply with the posting requirements in RCW 17.21.415.

(e) A park, cemetery, rest stop, or similar property as may be defined in rule shall at the time of the application place a marker at each primary point of entry.

(2) An individual making a landscape application to a school grounds, nursery school, or licensed day care, and not otherwise covered by subsection (1) of this section, shall at the time of the application place a marker at each primary point of entry to the school grounds.

(3) The marker shall be a minimum of four inches by five inches. It shall have the words: "THIS LANDSCAPE HAS BEEN TREATED BY" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. Larger size requirements for markers may be established in rule for specific applications. The company name and service mark shall be included between the headline and the footer on a marker placed by a commercial applicator. The applicator's telephone number where information can be obtained about the application shall be included in the footer of the marker. Markers shall be printed in colors contrasting to the background.

(4) The property owner or tenant shall remove the marker according to the schedule established in rule. A certified applicator or individual who complies with this section is not liable for the removal of markers by unauthorized persons or removal outside the designated removal time.

(5) A certified applicator or individual who complies with this section cannot be held liable for personal property damage or bodily injury resulting from markers that are placed as required. [2001 c 333 § 2; 1994 c 283 § 33; 1992 c 176 § 5.]

Additional notes found at www.leg.wa.gov

17.21.415 Schools—Policies and methods—Notification—Records—Liability. (1) As used in this section, "school" means a licensed day care center or a public kindergarten or a public elementary or secondary school.

(2) A school shall provide written notification, upon request, to parents or guardians of students and employees describing the school's pest control policies and methods, including the posting and notification requirements of this section.

(3) A school shall establish a notification system that, as a minimum, notifies interested parents or guardians of students and employees at least forty-eight hours before a pesticide application to a school facility. The notification system shall include posting of the notification in a prominent place in the main office of the school.

(4) All notifications to parents, guardians, and employees shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

- (a) The product name of the pesticide to be applied;
- (b) The intended date and time of application;
- (c) The location to which the pesticide is to be applied;
- (d) The pest to be controlled; and
- (e) The name and phone number of a contact person at the school.

(5) A school facility application must be made within forty-eight hours following the intended date and time stated in the notification or the notification process shall be repeated.

(6) A school shall, at the time of application, post notification signs for all pesticide applications made to school facilities unless the application is otherwise required to be posted by a certified applicator under the provisions of RCW 17.21.410(1)(d).

(a) Notification signs for applications made to school grounds by school employees shall be placed at the location of the application and at each primary point of entry to the school grounds. The signs shall be a minimum of four inches

by five inches and shall include the words: "THIS LANDSCAPE HAS BEEN RECENTLY SPRAYED OR TREATED WITH PESTICIDES BY YOUR SCHOOL" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. The footer shall provide the name and telephone number of a contact person at the school.

(b) Notification signs for applications made to school facilities other than school grounds shall be posted at the location of the application. The signs shall be a minimum of eight and one-half by eleven inches and shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

- (i) The product name of the pesticide applied;
- (ii) The date and time of application;
- (iii) The location to which the pesticide was applied;
- (iv) The pest to be controlled; and
- (v) The name and phone number of a contact person at the school.

(c) Notification signs shall be printed in colors contrasting to the background.

(d) Notification signs shall remain in place for at least twenty-four hours from the time the application is completed. In the event the pesticide label requires a restricted entry interval greater than twenty-four hours, the notification sign shall remain in place consistent with the restricted entry interval time as required by the label.

(7) A school facility application does not include the application of antimicrobial pesticides or the placement of insect or rodent baits that are not accessible to children.

(8) The prenotification requirements of this section do not apply if the school facility application is made when the school is not occupied by students for at least two consecutive days after the application.

(9) The prenotification requirements of this section do not apply to any emergency school facility application for control of any pest that poses an immediate human health or safety threat, such as an application to control stinging insects. When an emergency school facility application is made, notification consistent with the school's notification system shall occur as soon as possible after the application. The notification shall include information consistent with subsection (6)(b) of this section.

(10) A school shall make the records of all pesticide applications to school facilities required under this chapter, including an annual summary of the records, readily accessible to interested persons.

(11) A school is not liable for the removal of signs by unauthorized persons. A school that complies with this section may not be held liable for personal property damage or bodily injury resulting from signs that are placed as required. [2009 c 556 § 16; 2001 c 333 § 3.]

Additional notes found at www.leg.wa.gov

17.21.420 Pesticide-sensitive individuals—List procedure. (1) The department shall develop a list of pesticide-sensitive individuals. The list shall include any person with a documented pesticide sensitivity who submits information to the department on an application form developed by the department indicating the person's pesticide sensitivity.

(2) An applicant for inclusion on the pesticide-sensitive list may apply to the department at any time and shall provide

the department, on the department's form, the name, street address, and telephone number of the applicant and of each property owner with property abutting the applicant's principal place of residence. The pesticide sensitivity of an individual shall be certified by a physician who holds a valid license to practice medicine in this state. The lands listed on an application for inclusion on the pesticide-sensitive list shall constitute the pesticide notification area for that applicant. For highway or road rights-of-way, a property abutting shall mean that portion of the property within one-half mile of the principal place of residence.

(3) A person whose name has been included on the pesticide-sensitive list shall notify the department of a need to update the list as soon as possible after: (a) A change of address or telephone number; (b) a change in ownership of property abutting a pesticide-sensitive individual; (c) a change in the applicant's condition; or (d) the sensitivity is deemed to no longer exist.

(4) The pesticide-sensitive list shall expire on December 31 of each year. The department shall distribute application forms for the new list at a reasonable time prior to the expiration of the current list, including mailing an application form to each person on the current list at the address given by the person in his or her most recent application. Persons desiring to be placed on or remain on the list shall submit a new application each year.

(5) The department shall distribute the list by January 1 and June 15 of each year to all certified applicators likely to make landscape applications. The list shall provide multiple methods of accessing the information so that certified applicators making landscape applications or right-of-way applications are able to easily determine what properties and individuals require notification for a specific application. An updated list shall be distributed whenever deemed necessary by the department. Certified applicators may request a list of newly registered individuals that have been added to the list since the last distribution. Registered individuals shall receive verification that their name has been placed on the list. [1994 c 283 § 34; 1992 c 176 § 3.]

17.21.430 Pesticide-sensitive individuals—Notification. (1) A certified applicator making a landscape application or a right-of-way application to the pesticide notification area, as defined in RCW 17.21.420(2), of a person on the pesticide-sensitive list shall notify the listed pesticide-sensitive individual of the application. Notification shall be made at least two hours prior to the scheduled application, or in the case of an immediate service call, the applicator shall provide notification at the time of the application.

(2) Notification under this section shall be made in writing, in person, or by telephone, and shall disclose the date and approximate time of the application. In the event a certified applicator is unable to provide prior notification because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence of the individual listed on the pesticide-sensitive list at the time of the application. If a person on the pesticide-sensitive list lives in a multifamily dwelling such as an apartment or condominium, the applicator shall notify the person on the list or shall advise the manager or other property owner's representative to notify the person on the list of the application. [1992 c 176 § 4.]

17.21.440 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of labor and industries. (1) As used in this section, "federal worker protection standard" or "federal standard" means the worker protection standard for agricultural workers and handlers of agricultural pesticides adopted by the United States environmental protection agency in 40 C.F.R., part 170 as it exists on June 6, 1996.

(2)(a) No rule adopted under this chapter may impose requirements that make compliance with the federal worker protection standard impossible.

(b) The department shall adopt by rule safety and health standards that are at least as effective as the federal standard. Standards adopted by the department under this section shall be adopted in coordination with the department of labor and industries.

(3) If a violation of the federal worker protection standard, or of state rules regulating activities governed by the federal standard, is investigated by the department and by the department of labor and industries, the agencies shall conduct a joint investigation if feasible, and shall share relevant information. However, an investigation conducted by the department of labor and industries under Title 51 RCW solely with regard to industrial insurance shall not be considered to be an investigation by the department of labor and industries for this purpose. The agencies shall not issue duplicate citations to an individual or business for the same violation of the federal standard or state rules regulating activities governed by the federal standard. By December 1, 1996, the department and the department of labor and industries shall jointly establish a formal agreement that: Identifies the roles of each of the two agencies in conducting investigations of activities governed by the federal standard; and provides for protection of workers and enforcement of standards that is at least [as] effective as provided for other enforcement under this chapter. [1996 c 260 § 3.]

Finding—Intent—Severability—1996 c 260: See notes following RCW 49.17.280.

Department of labor and industries authority: RCW 49.17.280.

17.21.900 Preexisting liabilities not affected. The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective. [1961 c 249 § 31.]

17.21.920 Short title. This chapter may be cited as the Washington pesticide application act. [1961 c 249 § 33.]

17.21.930 Severability—1961 c 249. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 249 § 35.]

17.21.931 Severability—1967 c 177. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1967 c 177 § 20.]

17.21.932 Severability—1979 c 92. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 92 § 10.]

Chapter 17.24 RCW

INSECT PESTS AND PLANT DISEASES

Sections

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Horticultural pests and diseases: Chapter 15.08 RCW.

17.24.003 Purpose. The purpose of this chapter is to provide a strong system for the exclusion of plant and bee pests and diseases through regulation of movement and quarantines of infested areas to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state; plants and shrubs within the state; and the environment of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and the public and private costs that result when these infestations become established. [1991 c 257 § 3.]

17.24.007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the state department of agriculture.

(2) "Director" means the director of the state department of agriculture or the director's designee.

(3) "Quarantine" means a rule issued by the department that prohibits or regulates the movement of articles, bees, plants, or plant products from designated quarantine areas within or outside the state to prevent the spread of disease, plant pathogens, or pests to nonquarantine areas.

(4) "Plant pest" means a living stage of an insect, mite, nematode, slug, snail, or protozoa, or other invertebrate animal, bacteria, fungus, or parasitic plant, or their reproductive

parts, or viruses, or an organism similar to or allied with any of the foregoing plant pests, including a genetically engineered organism, or an infectious substance that can directly or indirectly injure or cause disease or damage in plants or parts of plants or in processed, manufactured, or other products of plants.

(5) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from the plants and plant products.

(6) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of inspection and certification document that accompanies the movement of inspected and certified plant material and plant products, or bees, bee hives, or beekeeping equipment.

(7) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, plant products, or bees, bee hives, or beekeeping equipment regulated under this chapter, in which the person agrees to comply with stipulated requirements.

(8) "Distribution" means the movement of a regulated article from the property where it is grown or kept, to property that is not contiguous to the property, regardless of the ownership of the properties.

(9) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques, excluding those organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs. 301-392).

(10) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee of any of these entities.

(11) "Sell" means to sell, to hold for sale, offer for sale, handle, or to use as inducement for the sale of another article or product.

(12) "Noxious weed" means a living stage, including, but not limited to, seeds and reproductive parts, of a parasitic or other plant of a kind that presents a threat to Washington agriculture or environment.

(13) "Regulated article" means a plant or plant product, bees or beekeeping equipment, noxious weed or other articles or equipment capable of harboring or transporting plant or bee pests or noxious weeds that is specifically addressed in rules or quarantines adopted under this chapter.

(14) "Owner" means the person having legal ownership, possession, or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, or their agent.

(15) "Nuisance" means a plant, or plant part, apiary, or property found in a commercial area on which is found a pest, pathogen, or disease that is a source of infestation to other properties.

(16) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

(17) "Bee pests" means a mite, other parasite, or disease that causes injury to bees and those honey bees generally rec-

ognized to have undesirable behavioral characteristics such as or as found in Africanized honey bees.

(18) "Biological control" means the use by humans of living organisms to control or suppress undesirable animals and plants; the action of parasites, predators, or pathogens on a host or prey population to produce a lower general equilibrium than would prevail in the absence of these agents.

(19) "Biological control agent" means a parasite, predator, or pathogen intentionally released, by humans, into a target host or prey population with the intent of causing population reduction of that host or prey.

(20) "Emergency" means a situation where there is an imminent danger of an infestation of plant pests or disease that seriously threatens the state's agricultural or horticultural industries or environment and that cannot be adequately addressed with normal procedures or existing resources. [2000 c 100 § 6; 1991 c 257 § 4.]

Additional notes found at www.leg.wa.gov

17.24.011 Regulation of plant, plant product, bee movement, and genetically engineered organisms. Notwithstanding the provisions of RCW 17.24.041, the director may:

(1) Make rules under which plants, plant products, bees, hives and beekeeping equipment, and noxious weeds may be brought into this state from other states, territories, or foreign countries; and

(2) Make rules with reference to plants, plant products, bees, bee hives and equipment, and genetically engineered organisms while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of plant and bee pests and noxious weeds. [1991 c 257 § 5.]

17.24.021 Inspection and investigation. (1) The director may intercept and hold or order held for inspection, or cause to be inspected while in transit or after arrival at their destination, all plants, plant products, bees, or other articles likely to carry plant pests, bee pests, or noxious weeds being moved into this state from another state, territory, or a foreign country or within or through this state for plant and bee pests and disease.

(2) The director may enter upon public and private premises at reasonable times for the purpose of carrying out this chapter. If the director be denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises. The court may upon such application issue the search warrant for the purposes requested.

(3) The director may adopt rules in accordance with chapter 34.05 RCW as may be necessary to carry out the purposes and provisions of this chapter. [1991 c 257 § 6.]

17.24.031 Determination of origin. The director may demand of a person who has in his or her possession or under his or her control, plants, bees, plant products, or other articles that may carry plant pests, bee pests, or noxious weeds, full information as to the origin and source of these items. Failure to provide that information, if known, may subject the person to a civil penalty. [1991 c 257 § 7.]

(2012 Ed.)

17.24.041 Power to adopt quarantine measures—

Rules. If determined to be necessary to protect the forest, agricultural, horticultural, floricultural, beekeeping, or environmental interests of this state, the director may declare a quarantine against an area, place, nursery, orchard, vineyard, apiary, or other agricultural establishment, county or counties within the state, or against other states, territories, or foreign countries, or a portion of these areas, in reference to plant pests, or bee pests, or noxious weeds, or genetically engineered plant or plant pest organisms. The director may prohibit the movement of all regulated articles from such quarantined places or areas that are likely to contain such plant pests or noxious weeds or genetically engineered plant, plant pest, or bee pest organisms. The quarantine may be made absolute or rules may be adopted prescribing the conditions under which the regulated articles may be moved into, or sold, or otherwise disposed of in the state. [1991 c 257 § 8.]

17.24.051 Introduction of plant pests, noxious weeds, or organisms affecting plant life.

The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in RCW 17.24.061.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter. [1991 c 257 § 9.]

17.24.061 Protection of privileged or confidential information—Procedure—Notice—Declaratory judgment.

(1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available

to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section. [1991 c 257 § 10.]

17.24.071 Compliance agreements. The director may enter into compliance agreements with a person engaged in growing, handling, or moving articles, bees, plants, or plant products regulated under this chapter. [1991 c 257 § 11.]

17.24.081 Prohibited acts. It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed. [1991 c 257 § 12.]

17.24.091 Impound and disposition. (1) If upon inspection, the director finds that an inspected plant or plant product or bees are infected or infested or that a regulated article is being held or transported in violation of a rule or quarantine of the department, the director shall notify the owner that a violation of this chapter exists. The director may impound or order the impounding of the infected or infested or regulated article in such a manner as may be necessary to prevent the threat of infestation. The notice shall be in writing and sent by certified mail or personal service identifying the impounded article and giving notice that the articles will be treated, returned to the shipper or to a quarantined area, or destroyed in a manner as to prevent infestation. The impounded article shall not be destroyed unless the director determines that (a) no effective treatment can be carried out; and (b) the impounded article cannot be returned to the shipper or shipped back to a quarantine area without threat of infestation to this state; and (c) mere possession by the owner constitutes an emergency.

(2) Before taking action to treat, return, or destroy the impounded article, the director shall notify the owner of the owner's right to a hearing before the director under chapter 34.05 RCW. Within ten days after the notice has been given the owner may request a hearing. The request must be in writing.

(3) The cost to impound articles along with the cost, if any, to treat, return, or destroy the articles shall be at the owner's expense. The owner is not entitled to compensation for infested or infected articles destroyed by the department under this section. [1991 c 257 § 13.]

17.24.100 Penalties—Second and subsequent offenses. (1) Except as provided in subsection (2) of this section, every person who violates or fails to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of this chapter is guilty of a misdemeanor.

(2) A second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder is a gross misdemeanor. [2003 c 53 § 119; 1981 c 296 § 26; 1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

17.24.101 Statewide survey and control activity. If there is reason to believe that a plant or bee pest may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state; or may cause harm to the environment of the state; or such information is needed to facilitate or allow the movement of forestry, agricultural, horticultural, or related products to out-of-state, foreign and domestic markets, the director may conduct, or cause to be conducted, surveys to determine the presence, absence, or distribution of a pest.

The director may take such measures as may be required to control or eradicate such pests where such measures are determined to be in the public interest, are technically feasible, and for which funds are appropriated or provided through cooperative agreements. [1991 c 257 § 14.]

17.24.111 Director's cooperation with other agencies. The director may enter into cooperative arrangements with a person, municipality, county, Washington State University or any of its experiment stations, or other agencies of this state, and with boards, officers, and authorities of other states and the United States, including the United States department of agriculture, for the inspection of bees, plants and plant parts and products and the control or eradication of plant pests, bee pests, or noxious weeds and to carry out other provisions of this chapter. [1991 c 257 § 15.]

17.24.121 Acquisition of lands, water supply, or other properties for quarantine locations. The director may acquire, in fee or in trust, by gift, or whenever funds are appropriated for such purposes, by purchase, easement, lease, or condemnation, lands or other property, water supplies, as may be deemed necessary for use by the department for establishing quarantine stations for the purpose of the isolation, prevention, eradication, elimination, and control of insect pests or plant pathogens that affect the agricultural or horticultural products of the state; for the propagation of biological control agents; or the isolation of genetically engineered plants or plant pests; or the isolation of bee pests. [1991 c 257 § 16.]

17.24.131 Requested inspections—Fee for service—Disbursements in lieu of fee. To facilitate the movement or sale of forest, agricultural, floricultural, horticultural and related products, or bees and related products, the director may provide, if requested by farmers, growers, or other interested persons, special inspections, pest identifications, plant identifications, plant diagnostic services, pest control activities, other special certifications and activities not otherwise authorized by statute and prescribe a fee for that service. The fee shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Moneys collected shall be deposited in the plant pest account, which is hereby created within the agricultural local fund. No appropriation is required for disbursement from the plant pest account to provide the services authorized by this section. In lieu of a fee, assessments and other funds deposited in the plant pest account may be disbursed to provide the services authorized by this section. [1997 c 227 § 2; 1991 c 257 § 17.]

Additional notes found at www.leg.wa.gov

17.24.141 Penalties—Criminal and civil penalty. Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to RCW 17.24.100, the director may impose upon and collect from the violator a civil penalty not exceeding five thousand dollars per violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of commission or omission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [1991 c 257 § 18.]

17.24.151 Violations—Costs of control. A person who, through a knowing and willful violation of a quarantine established under this chapter, causes an infestation to

become established, may be required to pay the costs of public control or eradication measures caused as a result of that violation. [1991 c 257 § 19.]

17.24.161 Funds for technical and scientific services. The director may, at the director's discretion, provide funds for technical or scientific services, labor, materials and supplies, and biological control agents for the control of plant pests, bee pests, and noxious weeds. [1991 c 257 § 20.]

17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures. (1) If the director determines that there exists an imminent danger of an infestation of plant pests or plant diseases that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, economic well-being, or the environment, the director shall request the governor to order emergency measures to control the pests or plant diseases under RCW 43.06.010(13). The director's findings shall contain an evaluation of the affect of the emergency measures on public health.

(2) If an emergency is declared pursuant to RCW 43.06.010(13), the director may appoint a committee to advise the governor through the director and to review emergency measures necessary under the authority of RCW 43.06.010(13) and this section and make subsequent recommendations to the governor. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to implement the emergency measures to prevent, control, or eradicate plant pests or plant diseases that are the subject of the emergency order. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals, companies, or agencies, to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he or she finds that the emergency no longer exists or if certain emergency measures should be discontinued. [2003 c 314 § 6; 1991 c 257 § 21.]

Findings—2003 c 314: See note following RCW 17.24.220.

17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions. The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages

incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his or her duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his or her service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to willful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law. [2011 c 336 § 461; 2011 c 103 § 43; 1982 c 153 § 3.]

Reviser's note: This section was amended by 2011 c 103 § 43 and by 2011 c 336 § 461, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

17.24.220 Sudden oak death syndrome—Coordinated response effort. The department and the department of natural resources shall coordinate their sudden oak death syndrome response efforts with other plant pest agencies and private organizations to exchange information, monitor the confirmed incidences of the disease, and take action as appropriate under existing plant pest control authorities to prevent the introduction of the disease into Washington and to control or eradicate the disease if it is determined to be present in the state. [2003 c 314 § 8.]

Findings—2003 c 314: "The legislature finds that since 1995 large numbers of oak and tanoak trees have been dying in the coastal counties of California. The legislature also finds that the disease causing the tree loss, which is commonly referred to as sudden oak death syndrome, has, as of July 27, 2003, been confirmed in twelve California counties, and one Oregon county. The legislature also finds that in addition to affecting several species of oak, this disease has been confirmed to affect several plant species common in Washington's forests, including Douglas Fir, big leaf maple, huckleberry, rhododendron, madrone, and manzanita. The legislature recognizes that the state of California and the United States department of agriculture have adopted restrictions on the movement of articles that may host the disease, and the state of Oregon and the Canadian government have adopted restrictions on the importation of potential host articles. The legislature finds that an introduction of sudden oak death syndrome into Washington could cause potential damage to the state's forest health, leading to both economic and ecological losses." [2003 c 314 § 7.]

17.24.900 Captions not law—1991 c 257. Captions as used in RCW 17.24.005 through 17.24.171 constitute no part of the law. [1991 c 257 § 24.]

Chapter 17.26 RCW CONTROL OF SPARTINA AND PURPLE LOOSESTRIFE

Sections

17.26.005	Findings.
17.26.006	Findings—Purpose.
17.26.007	Findings—Application to appropriations.
17.26.010	Restriction on state agencies and local governments.
17.26.011	Spartina removal includes restoration—Study.
17.26.015	Lead agency—Responsibilities.
17.26.020	High priority for all state agencies—Definitions.
17.26.900	Severability—1995 c 255.
17.26.901	Effective date—1995 c 255.

17.26.005 Findings. The legislature finds that:

(1) *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens* which are collectively called spartina are not native to the state of Washington nor to the west coast of North America. This noxious weed was inadvertently introduced into the wetlands of the state and is now aggressively invading new areas to the detriment of native ecosystems and aquatic habitat. The spread of spartina threatens to permanently convert and displace native freshwater and saltwater wetlands and intertidal zones, including critical habitat for migratory birds, many fish species, bivalves, invertebrates, marine mammals, and other animals. The continued spread of spartina will permanently reduce the diversity and the quantity of these species and will have a significant negative environmental impact.

Spartina poses a significant hydrological threat. Clumps and meadows of spartina are dense environments that bind sediments and lift the intertidal gradient up out of the intertidal zone through time. This process reduces flows during flood conditions, raises flood levels, and significantly alters the hydrological regime of estuarine areas.

Spartina spreads by rhizomes and seed production. Through lateral growth by rhizomes, spartina establishes a dense monotypic meadow. Through seed production and the spread of seed through the air and by water, spartina is currently being spread to other states and to Canadian provinces.

(2) Purple loosestrife was first documented in the state in 1929 along freshwater shorelands. It is now present throughout the state and is particularly abundant in Grant county and its neighboring counties. The plant appears to be colonizing more rapidly on the eastern side of the state than on the western side. It was first introduced to the Winchester wasteway area in the 1960's and has invaded the area rapidly. Purple loosestrife is displacing native plants and as a result is threatening an extremely important part of this state's wildlife habitat. *Lythrum salicaria* and *L. virgatum* are closely related loosestrife species that are morphologically similar and not easily distinguished from each other in the field. Both species have been referred to as purple loosestrife.

(3) Current laws and rules designed to protect the environment and preserve the wetland habitats, fish, and wildlife of the state are not designed to respond to an ecosystem-wide threat of this kind. State and federal agencies, local governments, weed boards, concerned individuals, and property owners attempting to deal with the ecological emergency posed by spartina and purple loosestrife infestations have been frustrated by interagency disagreements, demands for an undue amount of procedural and scientific process and information, dilatory appeals, and the improper application of

laws and regulations by agencies that have in fact undermined the legislative purposes of those same laws while ignoring the long-term implications of delay and inaction. There is a compelling need for strong leadership, coordination, and reporting by a single state agency to respond appropriately to this urgent environmental challenge.

Any further delay of control efforts will significantly increase the cost of spartina and purple loosestrife control and reduce the likelihood of long-term success. Control efforts must be coordinated across political and ownership boundaries in order to be effective.

(4) The presence of noxious weeds on public lands constitutes a public nuisance and negatively impacts public and private lands. The legislature finds that control and eradication of noxious weeds on private lands is in the public interest. [1995 c 255 § 1.]

17.26.006 Findings—Purpose. This state is facing an environmental disaster that will affect other states as well as other nations. The legislature finds that six years is sufficient time for state agencies to debate solutions to the spartina and purple loosestrife problems that are occurring in state waters. One of the purposes of chapter 255, Laws of 1995 is to focus agency action on control and future eradication of spartina and purple loosestrife. It is the mandate of the legislature that one state agency, the department of agriculture, be responsible for a unified effort to eliminate spartina and control purple loosestrife, with the advice of the state noxious weed control board, and that state agency shall be directly accountable to the legislature on the progress of the spartina eradication and purple loosestrife control program. [1995 c 255 § 2.]

17.26.007 Findings—Application to appropriations. This section applies to appropriations made to the department of agriculture specifically for the removal or control of spartina or purple loosestrife or both plants. The legislature finds that: The presence of spartina or purple loosestrife on private lands threatens wildlife habitat and provides a source of renewed infestation for public lands; and effective eradication or control of spartina or purple loosestrife requires concerted efforts on both public and private lands to protect public resources. The department of agriculture may grant funds to other state agencies, local governments, and nonprofit corporations for eradication or control purposes and may use those moneys itself. The department of agriculture may match private funds for eradication or control programs on private property on a fifty-fifty matching basis. The accounting and supervision of the funds at the local level shall be conducted by the department of agriculture. [1995 c 255 § 11.]

17.26.010 Restriction on state agencies and local governments. State agencies and local governments may not use any other local, state, or federal permitting requirement, regulatory authority, or legal mechanism to override the legislative intent and statutory mandates of chapter 255, Laws of 1995. [1995 c 255 § 8.]

17.26.011 Spartina removal includes restoration—Study. Spartina removal shall include restoration to return intertidal land and other infested lands to the condition found

on adjacent unaffected lands in the same tidal elevation. The department of fish and wildlife, the department of ecology, the department of agriculture, and the department of natural resources shall develop a restoration plan in cooperation with owners of spartina infested lands and shall submit the plan to the appropriate standing committees of the house of representatives and the senate by December 31, 1995. [1995 c 255 § 9.]

17.26.015 Lead agency—Responsibilities. (1) The state department of agriculture is the lead agency for the control of spartina and purple loosestrife with the advice of the state noxious weed control board.

(2) Responsibilities of the lead agency include:

(a) Coordination of the control program including memorandums of understanding, contracts, and agreements with local, state, federal, and tribal governmental entities and private parties;

(b) Preparation of a statewide spartina management plan utilizing integrated vegetation management strategies that encompass all of Washington's tidelands. The plan shall be developed in cooperation with local, state, federal, and tribal governments, private landowners, and concerned citizens. The plan shall prioritize areas for control. Nothing in this subsection prohibits the department from taking action to control spartina in a particular area of the state in accordance with a plan previously prepared by the state while preparing the statewide plan;

(c) Directing on the ground control efforts that include, but are not limited to: (i) Control work and contracts; (ii) spartina survey; (iii) collection and maintenance of spartina location data; (iv) purchasing equipment, goods, and services; (v) survey of threatened and endangered species; and (vi) site-specific environmental information and documents; and

(d) Evaluating the effectiveness of the control efforts.

The lead agency shall report to the appropriate standing committees of the house of representatives and the senate no later than December 15th of each year through the year 1999 on the progress of the program, the number of acres treated by various methods of control, and on the funds spent. [1998 c 245 § 4; 1995 c 255 § 10.]

17.26.020 High priority for all state agencies—Definitions. (1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and 77.55.081:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080. [2011 c 103 § 13; 2003 c 39 § 10; 1995 c 255 § 12.]

Purpose—2011 c 103: See note following RCW 15.26.120.

17.26.900 Severability—1995 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 255 § 14.]

17.26.901 Effective date—1995 c 255. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]. [1995 c 255 § 15.]

Chapter 17.28 RCW MOSQUITO CONTROL DISTRICTS

Sections

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17.28.900	Severability—1957 c 153.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.28.010 Definitions. When used in this chapter, the following terms, words or phrases shall have the following meaning:

(1) "District" means any mosquito control district formed pursuant to this chapter.

(2) "Board" or "district board" means the board of trustees governing the district.

(3) "County commissioners" means the governing body of the county.

(4) "Unit" means all unincorporated territory in a proposed district in one county, regarded as an entity, or each city in a proposed district, likewise regarded as an entity.

(5) "Territory" means any city or county or portion of either or both city or county having a population of not less than one hundred persons.

(6) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. [1957 c 153 § 1.]

17.28.020 Districts may be organized in counties—Petition, presentment, signatures. Any number of units of a territory within the state of Washington in Adams, Benton, Franklin, Grant, Kittitas, Walla Walla and Yakima counties or any other county may be organized as a mosquito control district under the provisions of this chapter.

A petition to form a district may consist of any number of separate instruments which shall be presented at a regular meeting of the county commissioners of the county in which the greater area of the proposed district is located. Petitions shall be signed by registered voters of each unit of the proposed district, equal in number to not less than ten percent of the votes cast in each unit respectively for the office of governor at the last gubernatorial election prior to the time of presenting the petition. [1969 c 96 § 1; 1957 c 153 § 2.]

17.28.030 Petition method—Description of boundaries—Verification of signatures—Resolution to include city. Before a city can be included as a part of the proposed district its governing body shall have requested that the city be included by resolution, duly authenticated.

The petition shall set forth and describe the boundaries of the proposed district and it shall request that it be organized as a mosquito control district. Upon receipt of such a petition, the auditor of the county in which the greater area of the proposed district is located shall be charged with the responsibility of examining the same and certifying to the

sufficiency of the signatures thereon. For the purpose of examining the signatures on such petitions, the auditor shall be permitted access to the voters' registration books of each city and county located in the proposed district and may appoint the respective county auditors and city clerks thereof as his or her deputies. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the county in which the greater area of the proposed district is located, together with his or her certificate as to the sufficiency thereof. [2011 c 336 § 462; 1957 c 153 § 3.]

17.28.040 Petition method—Publication of petition and notice of meeting. Upon receipt of a duly certified petition, the board of commissioners shall cause the text of the petition to be published once a week for at least three consecutive weeks in one or more newspapers of general circulation within the county where the petition is presented and at each city a portion of which is included in the proposed district. If any portion of the proposed district lies in another county, the petition and notice shall be likewise published in that county.

Only one copy of the petition need be published even though the district embraces more than one unit. No more than five of the names attached to the petition need appear in the publication of the petition and notice, but the number of signers shall be stated.

With the publication of the petition there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered, stating that all persons interested may appear and be heard. [1957 c 153 § 4.]

17.28.050 Resolution method. Such districts may also be organized upon the adoption by the county commissioners of a resolution of intention so to do, in lieu of the procedure hereinbefore provided for the presentation of petitions. In the event the county commissioners adopt a resolution of intention, such resolution shall describe the boundaries of the proposed district and shall set a time and place at which they will consider the organization of the district, and shall state that all persons interested may appear and be heard. Such resolution of intention shall be published in the same manner and for the same length of time as a petition. [1957 c 153 § 5.]

17.28.060 Hearing—Defective petition—Establishment of boundaries. At the time stated in the notice of the filing of the petition or the time mentioned in the resolution of intention, the county commissioners shall consider the organization of the district and hear those appearing and all protests and objections to it. The commissioners may adjourn the hearing from time to time, not exceeding two months in all.

No defect in the contents of the petition or in the title or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings if the petition has a sufficient number of qualified signatures.

On the final hearing the county commissioners shall make such changes in the proposed boundaries as are advisable, and shall define and establish the boundaries. [1957 c 153 § 6.]

(2012 Ed.)

17.28.070 Procedure to include other territory. If the county commissioners deem it proper to include any territory not proposed for inclusion within the proposed boundaries, they shall first cause notice of intention to do so to be mailed to each owner of land in the territory whose name appears as owner on the last completed assessment roll of the county in which the territory lies, addressed to the owner at his or her address given on the assessment roll, or if no address is given, to his or her last known address; or if it is not known, at the county seat of the county in which his or her land lies. The notice shall describe the territory and shall fix a time, not less than two weeks from the date of mailing, when all persons interested may appear before the county commissioners and be heard.

The boundaries of a district lying in a city shall not be altered unless the governing board of the city, by resolution, consents to the alteration. [2011 c 336 § 463; 1957 c 153 § 7.]

17.28.080 Determination of public necessity and compliance with chapter. Upon the hearing of the petition the county commissioners shall determine whether the public necessity or welfare of the proposed territory and of its inhabitants requires the formation of the district, and shall also determine whether the petition complies with the provisions of this chapter, and for that purpose shall hear all competent and relevant testimony offered. [1957 c 153 § 8.]

17.28.090 Declaration establishing and naming district—Election to form district—Establishment of district. If, from the testimony given before the county commissioners, it appears to that board that the public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the county commissioners, subject to approval of the voters of the district as hereinafter provided. The name shall contain the words "mosquito control district."

At the time of the declaration establishing and naming the district, the county commissioners shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for three consecutive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed district as finally adopted, and the object of the election. If any portion of the proposed district lies in another county, a notice of such election shall likewise be published in that county.

The election on the formation of the mosquito control district shall be conducted by the auditor of the county in which the greater area of the proposed district is located in accordance with the general election laws of the state and the results thereof shall be canvassed by that county's canvassing board. For the purpose of conducting an election under this section, the auditor of the county in which the greater area of the proposed district is located may appoint the auditor of any county or the city clerk of any city lying wholly or partially within the proposed district as his or her deputies. No person

shall be entitled to vote at such election unless he or she is a qualified voter under the laws of the state in effect at the time of such election and has resided within the mosquito control district for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall a mosquito control district be established for the area described in a resolution of the board of commissioners of county adopted on the day of, 19 . . . ?

YES
NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the mosquito control district shall thereupon be established and the county commissioners of the county in which the greater area of the district is situated shall immediately file for record in the office of the county auditor of each county in which any portion of the land embraced in the district is situated, and shall also forward to the county commissioners of each of the other counties, if any, in which any portion of the district is situated, and also shall file with the secretary of state, a certified copy of the order of the county commissioners. From and after the date of the filing of the certified copy with the secretary of state, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter, or necessarily incident thereto.

If a majority of the persons voting on the proposition shall vote in favor thereof, all expenses of the election shall be paid by the mosquito control district when organized. If the proposition fails to receive a majority of votes in favor, the expenses of the election shall be borne by the respective counties in which the district is located in proportion to the number of votes cast in said counties. [2011 c 336 § 464; 1957 c 153 § 9.]

17.28.100 Election on proposition to levy tax. At the same election there shall be submitted to the voters residing within the district, for their approval or rejection, a proposition authorizing the mosquito control district, if formed, to levy at the earliest time permitted by law on all taxable property located within the mosquito control district a general tax, for one year, of up to twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the mosquito control district. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

Shall the mosquito control district, if formed, levy a general tax of cents per thousand dollars of assessed value for one year upon all the taxable property within said district in excess of the constitutional and/or statutory tax limits for authorized purposes of the district?

YES
NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the

proposition to levy such tax in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1982 c 217 § 1; 1973 1st ex.s. c 195 § 2; 1957 c 153 § 10.]

Additional notes found at www.leg.wa.gov

17.28.110 Board of trustees—Composition. Within thirty days after the filing with the secretary of state of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed. The district board shall be appointed as follows:

(1) If the district is situated in one county only and consists wholly of unincorporated territory, five members shall be appointed by the county commissioners of the county.

(2) If the district is situated entirely in one county and includes both incorporated and unincorporated territory one member shall be appointed from each commissioner district lying wholly or partly within the district by the county commissioners of the county, and one member from each city, the whole or part of which is situated in the district, by the governing body of the city; but if the district board created consists of less than five members, the county commissioners shall appoint from the district at large enough additional members to make a board of five members.

(3) If the district is situated in two or more counties and is comprised wholly of incorporated territory, one member shall be appointed from each commissioner district of each county or portion of a county situated in the district by the county commissioners; but if the district board created consists of less than five members, the county commissioners of the county in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members.

(4) If the district is situated in two or more counties and consists of both incorporated and unincorporated territory, one member shall be appointed by the county commissioners of each of the counties from that portion of the district lying within each commissioner district within its jurisdiction; and one member from each city, a portion of which is situated in the district by the governing body of the city; but if the board created consists of less than five members, the county commissioners in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members. [1959 c 64 § 1; 1957 c 153 § 11.]

17.28.120 Board of trustees—Name of board—Qualification of members. The district board shall be called "The board of trustees of mosquito control district."

Each member of the board appointed by the governing body of a city shall be an elector of the city from which he or she is appointed and a resident of that portion of the city which is in the district.

Each member appointed from a county or portion of a county shall be an elector of the county and a resident of that portion of the county which is in the district.

Each member appointed at large shall be an elector of the district. [2011 c 336 § 465; 1957 c 153 § 12.]

17.28.130 Board of trustees—Terms—Vacancies.

The members of the first board in any district shall classify themselves by lot at their first meeting so that:

(1) If the total membership is an even number, the terms of one-half the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

(2) If the total membership is an odd number, the terms of a bare majority of the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

The term of each subsequent member is two years from and after the expiration of the term of his or her predecessor.

In event of the resignation, death, or disability of any member, his or her successor shall be appointed by the governing body which appointed him or her. [2011 c 336 § 466; 1957 c 153 § 13.]

17.28.140 Board of trustees—Organization—Officers—Compensation—Expenses. The members of the first district board shall meet on the first Monday subsequent to thirty days after the filing with the secretary of state of the certificate of incorporation of the district. They shall organize by the election of one of their members as president and one as secretary.

The members of the district board shall serve without compensation; but the necessary expenses of each member for actual traveling in connection with meetings or business of the board may be allowed and paid.

The secretary shall receive such compensation as shall be fixed by the district board. [1957 c 153 § 14.]

17.28.150 Board of trustees—Meetings—Rules—Quorum. The district board shall provide for the time and place of holding its regular meetings, and the manner of calling them, and shall establish rules for its proceedings.

Special meetings may be called by three members, notice of which shall be given to each member at least twenty-four hours before the meeting.

All of its sessions, whether regular or special, shall be open to the public.

A majority of the members shall constitute a quorum for the transaction of business. [1957 c 153 § 15.]

17.28.160 Powers of district. A mosquito control district organized under this chapter may:

(1) Take all necessary or proper steps for the extermination of mosquitoes.

(2) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes.

(3) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights-of-way, easements, property, or material necessary for any of those purposes.

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(4) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

(5) Enter upon without hindrance any lands within the district for the purpose of inspection to ascertain whether breeding places of mosquitoes exist upon such lands; or to abate public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes upon such lands have been complied with; or to treat with oil or other larvicidal material any breeding places of mosquitoes upon such lands.

(6) Sell or lease any land, rights-of-way, easements, property or material acquired by the district.

(7) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board payable annually or semiannually as the board may prescribe.

(8) Make contracts with the United States, or any state, municipality, or any department of those entities for carrying out the general purpose for which the district is formed.

(9) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes.

(10) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants; and publish information or literature and do any and all other things necessary or incident to the powers granted by, and to carry out the projects specified in this chapter. [1981 c 156 § 1; 1957 c 153 § 16.]

17.28.170 Mosquito breeding places declared public nuisance—Abatement. Any breeding place for mosquitoes which exists by reason of any use made of the land on which it is found or of any artificial change in its natural condition is a public nuisance: PROVIDED, That conditions or usage of land which are beyond the control of the landowner or are not contrary to normal, accepted practices of water usage in the district, shall not be considered a public nuisance.

The nuisance may be abated in any action or proceeding, or by any remedy provided by law. [1959 c 64 § 2; 1957 c 153 § 17.]

17.28.175 Control of mosquitos—Declaration that owner is responsible. A board established pursuant to RCW 17.28.110 may adopt, by resolution, a policy declaring that the control of mosquitos within the district is the responsibility of the owner of the land from which the mosquitos originate. To protect the public health or welfare, the board may, in accordance with policies and standards established by the board following a public hearing, adopt a regulation requiring owners of land within the district to perform such acts as may be necessary to control mosquitos. [1990 c 300 § 2.]

17.28.185 Control of mosquitos—Noncompliance by landowner with regulations. (1) Whenever the board finds that the owner has not taken prompt and sufficient action to comply with regulations adopted pursuant to RCW 17.28.175 to control mosquitos originating from the owner's land, the

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board shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, or served by personal service. The notice shall provide a reasonable time period for action to be taken to control mosquitos. If the board deems that a public nuisance or threat to public health or welfare caused by the mosquito infestation is sufficiently severe, it may require immediate control action to be taken within forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service.

(2) If the owner does not take sufficient action to control mosquitos in accordance with the notice, the board may control them, or cause their being controlled, at the expense of the owner. The amount of such expense shall constitute a lien against the property and may be enforced by proceedings on such lien. The owner shall be liable for payment of the expenses, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses, including reasonable attorneys' fees, incurred by the board in carrying out this section, may be recovered at the same time, as a part of the action filed under this section. The venue in proceedings for reimbursement of expenses brought pursuant to this section, including those involving governmental entities, shall be the county in which the real property that is the subject of the action is situated. [1990 c 300 § 3.]

17.28.250 Interference with entry or work of district—Penalty. Any person who obstructs, hinders, or interferes with the entry upon any land within the district of any officer or employee of the district in the performance of his or her duty, and any person who obstructs, interferes with, molests, or damages any work performed by the district, is guilty of a misdemeanor. [2011 c 336 § 467; 1957 c 153 § 25.]

17.28.251 Borrowing money or issuing warrants in anticipation of revenue. A mosquito control district may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of revenue, and such warrants shall be redeemed from the first money available from such taxes. [1959 c 64 § 3.]

17.28.252 Excess levy authorized. A mosquito control district shall have the power to levy additional taxes in excess of the constitutional and/or statutory limitations for any of the authorized purposes of such district, not in excess of fifty cents per thousand dollars of assessed value per year when authorized so to do by the electors of such district by a three-fifths majority of those voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended at such time as may be fixed by the board of trustees for the district, which special election may be called by the board of trustees of the district, at which special election the proposition of authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "Yes" and those opposing thereto to vote "No". Nothing herein shall be construed to prevent holding the fore-

going special election at the same time as that fixed for a general election. [1973 1st ex.s. c 195 § 3; 1959 c 64 § 4.]

Additional notes found at www.leg.wa.gov

17.28.253 District boundaries for tax purposes. For the purpose of property taxation and the levying of property taxes the boundaries of the mosquito control district shall be the established official boundary of such district existing on the first day of September of the year in which the levy is made, and no such levy shall be made for any mosquito control district whose boundaries are not duly established on the first day of September of such year. [1959 c 64 § 5.]

17.28.254 Abatement, extermination declared necessity and benefit to land. It is hereby declared that whenever the public necessity or welfare has required the formation of a mosquito control district, the abatement or extermination of mosquitoes within the district is of direct, economic benefit to the land located within such district and is necessary for the protection of the public health, safety and welfare of those residing therein. [1959 c 64 § 6.]

17.28.255 Classification of property—Assessments. The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. A mosquito control district must use the assessed value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment. If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used. [2005 c 181 § 2; 1959 c 64 § 7.]

17.28.256 Assessments—Roll, hearings, notices, objections, appeal, etc. The board of trustees in assessing the property within the district and the rights, duties and liabilities of property owners therein shall be governed, insofar as is consistent with this chapter, by the provisions for county road improvement districts as set forth in RCW 36.88.090 through 36.88.110. [1959 c 64 § 8.]

17.28.257 Assessments—Payment, lien, delinquencies, foreclosure, etc. The provisions of RCW 36.88.120, 36.88.140, 36.88.150, 36.88.170 and 36.88.180 governing the liens, collection, payment of assessments, delinquent assessments, interest and penalties, lien foreclosure and foreclosed property of county road improvement districts shall govern such matters as applied to mosquito control districts. [1959 c 64 § 9.]

17.28.258 County treasurer—Duties. The county treasurer shall collect all mosquito control district assess-

ments, and the duties and responsibilities herein imposed upon him or her shall be among the duties and responsibilities of his or her office for which his or her bond is given as county treasurer. The collection and disposition of revenue from such assessments and the depository thereof shall be the same as for tax revenues of such districts as provided in RCW 17.28.270. [2011 c 336 § 468; 1959 c 64 § 10.]

17.28.260 General obligation bonds—Excess property tax levies. A mosquito control district shall have the power to issue general obligation bonds and to pledge the full faith and credit of the district to the payment thereof, for authorized capital purposes of the mosquito control district, and to provide for the retirement thereof by excess property tax levies whenever a proposition authorizing both the issuance of such bonds and the imposition of such excess levies has been approved by the voters of the district, at an election held pursuant to RCW 39.36.050, by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of votes cast within the area of said mosquito control district at the last preceding county or state general election. Mosquito control districts may become indebted for capital purposes up to an amount equal to one and one-fourth percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015.

Such bonds shall never be issued to run for a longer period than ten years from the date of issue and shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 5; 1983 c 167 § 18; 1973 1st ex.s. c 195 § 4; 1970 ex.s. c 56 § 5; 1969 ex.s. c 232 § 65; 1957 c 153 § 26.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

17.28.270 Collection, disposition, of revenue—Depository. All taxes levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes. When collected, the taxes shall be paid into the county treasury for the use of the district.

If the district is in more than one county the treasury of the county in which the district is organized is the depository of all funds of the district.

The treasurers of the other counties shall, at any time, not oftener than twice each year, upon the order of the district board settle with the district board and pay over to the treasurer of the county where the district is organized all money in their possession belonging to the district. The last named treasurer shall give a receipt for the money and place it to the credit of the district. [1957 c 153 § 27.]

17.28.280 Withdrawal of funds. The funds shall only be withdrawn from the county treasury depository upon the warrant of the district board signed by its president or acting president, and countersigned by its secretary. [1957 c 153 § 28.]

17.28.290 Matching funds. Any part or all of the taxes collected for use of the district may be used for matching funds made available to the district by county, state, or federal governmental agencies. [1957 c 153 § 29.]

17.28.300 Expenses of special elections. All expenses of any special election conducted pursuant to the provisions of this chapter shall be paid by the mosquito control district. [1957 c 153 § 30.]

17.28.310 Annual certification of assessed valuation. It shall be the duty of the assessor of each county lying wholly or partially within the district to certify annually to the board the aggregate assessed valuation of all taxable property in his or her county situated in any mosquito control district as the same appears from the last assessment roll of his or her county. [2011 c 336 § 469; 1957 c 153 § 31.]

17.28.320 Annexation of territory authorized—Consent by city. Any territory contiguous to a district may be annexed to the district.

If the territory to be annexed is in a city, consent to the annexation shall first be obtained from the governing body of the city. An authenticated copy of the resolution or order of that body consenting to the annexation shall be attached to the annexation petition. [1957 c 153 § 32.]

17.28.330 Annexation of territory authorized—Petition—Hearing—Boundaries. The district board, upon receiving a written petition for annexation containing a description of the territory sought to be annexed, signed by registered voters in said territory equal in number to at least ten percent of the number of votes cast in the territory for the office of governor at the last gubernatorial election prior to the time the petition is presented, shall set the petition for hearing. It shall publish notice of the hearing along with a copy of the petition, stating the time and place set for the hearing, in each county in which any part of the district or of the territory is situated, and in each city situated wholly or in part in the territory. Not more than five of the names attached to the petition need appear in the publication, but the number of signers shall be stated.

At the time set for the hearing the district board shall hear persons appearing in behalf of the petition and all protests and objections to it. The district board may adjourn the hearing from time to time, but not exceeding two months in all.

On the final hearing the district board shall make such changes as it believes advisable in the boundaries of the territory, and shall define and establish the boundaries. It shall also determine whether the petition meets the requirements of this chapter. [1957 c 153 § 33.]

17.28.340 Annexation of territory authorized—Order of annexation—Election. If upon the hearing the district board finds that the petition and the proceedings thereon meet the requirements of this chapter and that it is desirable and to the interests of the district and of the territory proposed to be annexed that the territory, with boundaries as fixed and determined by the district board, or any portion of it, should be annexed to the district, the board shall order the

boundaries of the district changed to include the territory, or portion of the territory, subject to approval of the electors of the territory proposed to be annexed. The election to be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district. The expenses of such election shall be borne by the mosquito control district regardless of the outcome of the election.

The order of annexation shall describe the boundaries of the annexed territory and that portion of the boundary of the district which coincides with any boundary of the territory. If necessary in making this order, the board may have any portion of the boundaries surveyed.

If more than one petition for the annexation of the territory has been presented, the district board may in one order include in the district any number of separate territories. [1957 c 153 § 34.]

17.28.350 Annexation of territory authorized—Filing of order—Composition of board. The order of annexation shall be entered in the minutes of the board and certified copies shall be filed with the secretary of state and with the county clerk and county auditor of each county in which the district or any part of it is situated.

From and after the date of the filing and recording of the certified copies of the order, the territory described in the order is a part of the district, with all the rights, privileges, and powers set forth in this act and those necessarily incident thereto.

After the annexation of territory to a district, the district board shall consist of the number of members and shall be appointed in the manner prescribed by this chapter for a district formed originally with boundaries embracing the annexed territory. However, the members of the district board in office at the time of the annexation shall continue to serve as members during the remainder of the terms for which they were appointed. [1957 c 153 § 35.]

17.28.360 Consolidation of districts—Initial proceedings. Whenever in the judgment of the district board it is for the best interests of the district that it be consolidated with one or more other districts, it may, by a two-thirds vote of its members, adopt a resolution reciting that fact and declaring the advisability of such consolidation and the willingness of the board to consolidate. The resolution shall be sent to the board of each district with which consolidation is proposed.

The board of each district to which a proposal of consolidation is sent shall consider said proposal and give notice of its decision to the proposing board. [1957 c 153 § 36.]

17.28.370 Consolidation of districts—Concurrent resolution. Should it appear that two-thirds of the members of each of the boards of districts proposed to be consolidated favor consolidation each of said boards shall then, by a vote of not less than two-thirds of its members adopt a concurrent resolution in favor of consolidation, declaring its willingness to consolidate, specifying a name for the consolidated district. Immediately upon the adoption of said concurrent resolution a copy of same signed by not less than two-thirds of the members of each board shall be forwarded to the county com-

missioners of the county in which all of or a major portion of the land of all, the districts consolidated are situated. [1957 c 153 § 37.]

17.28.380 Consolidation of districts—Election. When the concurrent resolution for consolidation has been adopted, each board of the districts proposed for consolidation shall forthwith call a special election in its district in which shall be presented to the electors of the districts the question whether the consolidation shall be effected.

The election shall be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district.

The board of each district shall declare the returns of the election in its district, and shall certify the results to the county commissioners of the county in which all the districts, or the major portion of the land of all the districts, are situated. [1957 c 153 § 38.]

17.28.390 Consolidation of districts—Order of consolidation. Should not less than two-thirds of the votes of each of the respective districts proposed to be consolidated favor consolidation the county commissioners shall immediately:

(1) Enter an order on its minutes consolidating all of the districts proposed for consolidation into one district with name as specified in the concurrent resolution.

(2) Transmit a certified copy of the order to the county commissioners of any other county in which any portion of the consolidated district is situated.

(3) Record a copy in the office of the county auditor of each of the counties in which any portion of the consolidated district is situated.

(4) File a copy in the office of the secretary of state.

After the transmission, recording and filing of the order, the territory in the districts entering into the consolidation proposal forms a single consolidated district. [1957 c 153 § 39.]

17.28.400 Consolidation of districts—Composition of board. After the consolidation, the board of the consolidated district shall consist of the number and shall be appointed in the manner prescribed by this chapter for a district originally formed.

The terms of the members of the district boards of the several districts consolidated who are in office at the time of consolidation shall terminate at the time the consolidation becomes effective. [1957 c 153 § 40.]

17.28.410 Consolidation of districts—Powers of consolidated district—Indebtedness of former districts. The consolidated district has all the rights, powers, duties, privileges and obligations of a district formed originally under the provisions of this chapter.

If at the time of consolidation there is outstanding an indebtedness of any of the former districts included in the consolidated district, that indebtedness shall be paid in the manner provided for the payment of indebtedness upon dissolution of a district.

A consolidated district shall not be liable for any indebtedness of any of the former districts included in it which was outstanding at the time of consolidation.

No property in any of the former districts shall be taxed to pay any indebtedness of any other former district existing at the date of the consolidation. [1957 c 153 § 41.]

17.28.420 Dissolution—Election. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors in the district at a special election called by the district board upon the question. The question shall be submitted as, "Shall the district be dissolved?", or words to that effect.

Notice of the election shall be published at least once a week for at least four weeks prior to the date of the election in a newspaper of general circulation in each county of the district. [1957 c 153 § 42.]

17.28.430 Dissolution—Result of election to be certified—Certificate of dissolution. Should two-thirds or more of the votes at the election favor dissolution the district board shall certify that fact to the secretary of state. Upon receipt of such certification the secretary of state shall issue his or her certificate reciting that the district (naming it) has been dissolved, and shall transmit to and file a copy with the county clerk of each county in which any portion of the district is situated.

After the date of the certificate of the secretary of state, the district is dissolved. [2011 c 336 § 470; 1957 c 153 § 43.]

17.28.440 Dissolution—Disposition of property. If the district at the time of dissolution was wholly within unincorporated territory in one county, its property vests in that county.

If the district at the time of dissolution was situated wholly within the boundaries of a single city, its property vests in that city.

If the district at the time of dissolution comprised only unincorporated territory in two or more counties, its property vests in those counties in proportion to the assessed value of each county's property within the boundaries of the district as shown on the last equalized county assessment roll.

If the district at the time of dissolution comprised both incorporated and unincorporated territory, its property vests in each unit in proportion as its assessed property value lies within the boundaries of the district: PROVIDED, HOWEVER, That any real property, easements, or rights-of-way vest in the city in which they are situated or in the county in which they are situated. [1957 c 153 § 44.]

17.28.450 Dissolution—Collection of taxes to discharge indebtedness. If, at the time of election to dissolve, a district has outstanding any indebtedness, the vote to dissolve the district dissolves it for all purposes except the levy and collection of taxes for the payment of the indebtedness, and expenses of assessing, levying, and collecting such taxes.

Until the indebtedness is paid, the county commissioners of the county in which the greater portion of the district was situated shall act as the ex officio district board and shall levy taxes and perform such functions as may be necessary in order to pay the indebtedness. [1957 c 153 § 45.]

17.28.900 Severability—1957 c 153. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included therein, if any such remaining part can then be administered in furtherance of the purposes of this chapter. [1957 c 153 § 46.]

**Chapter 17.34 RCW
PEST CONTROL COMPACT**

Sections

17.34.010	Compact provisions.
17.34.020	Cooperation with insurance fund authorized.
17.34.030	Filing of bylaws and amendments.
17.34.040	Compact administrator.
17.34.050	Requests or applications for assistance from insurance fund.
17.34.060	Agency incurring expenses to be credited with payments to this state.
17.34.070	"Executive head" defined.

17.34.010 Compact provisions. The pest control compact is hereby enacted into law and entered into with all other jurisdiction legally joining therein in the form substantially as follows:

**ARTICLE I
FINDINGS**

The party states find that:

1. In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

2. Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

3. The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

4. While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

**ARTICLE II
DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

1. "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

2. "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or inten-

sification of measures to control or eradicate one or more pests within one or more other states.

3. "Responding state" means a state request to undertake or intensify the measures referred to in subdivision (2) of this Article.

4. "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

5. "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

6. "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

7. "Executive Committee" means the committee established pursuant to Article V(E) of this compact.

ARTICLE III THE INSURANCE FUND

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT

- A. The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.
- B. The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.
- C. The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.
- D. The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provisions for the

bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

- E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.
- F. The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.
- G. The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.
- H. The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.
- I. The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.
- J. In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V COMPACT AND INSURANCE FUND ADMINISTRATION

- A. In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:
 1. Assist in the coordination of activities pursuant to the compact in his state; and
 2. Represent his state on the Governing Board of the Insurance Fund.
- B. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representa-

tives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.

- C. The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.
- D. At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.
- E. The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

ARTICLE VI ASSISTANCE AND REIMBURSEMENT

- A. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:
 - 1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
 - 2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.
- B. Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party

state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

- C. In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:
 - 1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
 - 2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.
 - 3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
 - 4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.
 - 5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.
 - 6. Such other information as the Governing Board may require consistent with the provisions of this compact.
- D. The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.
- E. Upon the submission as required by paragraph (C) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this

compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

- F. A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.
- G. Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.
- H. Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the Federal Government and shall request the appropriate agency or agencies of the Federal Government for such assistance and participation.
- I. The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

ARTICLE VII

ADVISORY AND TECHNICAL COMMITTEES

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Gov-

erning Board or Executive Committee makes its disposition of the application.

ARTICLE VIII

RELATIONS WITH NONPARTY JURISDICTIONS

- A. A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.
- B. At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.
- C. The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

ARTICLE IX

FINANCE

- A. The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.
- B. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.
- C. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account". The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and

shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

- D. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(G) of this compact, provided that the Governing Board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV(G) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.
- E. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.
- F. The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

ARTICLE X

ENTRY INTO FORCE AND WITHDRAWAL

- A. This compact shall enter into force when enacted into law by any five or more states: provided, that one such state is contiguous to this state and the legislature has appropriated the necessary funds. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
- B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held

invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1969 ex.s. c 130 § 1.]

17.34.020 Cooperation with insurance fund authorized. Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact. [1969 ex.s. c 130 § 2.]

17.34.030 Filing of bylaws and amendments. Pursuant to Article IV(H) of the compact, copies of bylaws and amendments thereto shall be filed with the code reviser's office. [1969 ex.s. c 130 § 3.]

17.34.040 Compact administrator. The compact administrator for this state shall be the director of agriculture. The duties of the compact administrator shall be deemed a regular part of his or her office. [2011 c 336 § 471; 1969 ex.s. c 130 § 4.]

17.34.050 Requests or applications for assistance from insurance fund. Within the meaning of Article VI(B) or VIII(A), a request or application for assistance from the insurance fund may be made by the director of agriculture whenever in his or her judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request. [2011 c 336 § 472; 1969 ex.s. c 130 § 5.]

17.34.060 Agency incurring expenses to be credited with payments to this state. The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his or her account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof. [2011 c 336 § 473; 1969 ex.s. c 130 § 6.]

17.34.070 "Executive head" defined. As used in the compact, with reference to this state, the term "executive head" shall mean the director of agriculture. [1969 ex.s. c 130 § 7.]

